This project is co-financed by the European Union and the Republic of Turkey

IMPROVING SOCIAL DIALOGUE IN WORKING LIFE

Analysis of Needs in the Context of Improving the Collective Bargaining Authorisation System in Turkey

2018

ANKARA

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TABLE OF CONTENTS

TABLES

FOREWORD

Social dialogue is a core value and an ultimate goal of the International Labour Organization (ILO). The Ministry of Family, Labour and Social Services is well aware of the value and significance of social dialogue across the country in policy-making and implementation. Social dialogue is a proven record of generating sustainable solutions including in times of crises and recovery. Recognizing the value of social dialogue, the International Labour Organization for Turkey provided technical support to the Ministry of Family, Labour and Social Services to implement a project entitled 'Improving Social Dialogue in Working Life' within the framework of EU Instrument of Pre-accession Funds. The overall objective of this project is to improve social dialogue at all levels.

This work is a part of the research studies conducted under the Project. The objective of the study is to analyze the collective bargaining authorization system in Turkey and provide recommendations for further improvement, taking into account of the views of social partners.

We thank many institutions and persons who contributed to the research including particularly our valuable professors who undertook the study. We further thank all social parties who supported and contributed at all stages of the research, experts and academicians contributing to interviews, and the Ministry of Family, Labour and Social Services, Social Dialogue and Tripartism Unit (DIALOGUE) and International Labour Standards Unit (NORMES) at Geneva, and the Project Management Team at ILO Office for Turkey.

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Ministry of Family, Labour and Social Services
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Director of the ILO Office for Turkey

1. INTRODUCTION

The collective bargaining authorisation system mainly consists of three stages as a process that functions to determine whether the parties fulfil the authorisation conditions required by the Law No. 6356 on Trade Unions and Collective Labour Agreement. First stage is for the trade union, employer or employers' union, which can be a party to the collective labour agreement, to think that the conditions required by the Law for signing a collective labour agreement are fulfilled; second is the determination of authority of the employers or the trade union which thinks it has fulfilled the conditions, upon their application to the Ministry of Family, Labour and Social Services; and the last one is the completion of the appeal process and awarding the trade union with an authorisation document or repealing the determination of authority.

The rule on the employers' collective labour agreement authority is laid down the same both in the repealed the Law No. 2822 and the Law No. 6356. On the other hand, conditions for workers' authority are regulated differently in the Law No. 6356 on Trade Unions and Collective Labour Agreement compared to the repealed the Law No. 2822 on Collective Labour Agreement, Strike and Lockout. However, workers' authority conditions and transitional provisions about authority have been amended many times after the Law No. 6356 entered into force.

The Law No. 6356 provides that determination of authority can be requested by a trade union anytime in a workplace or enterprise which does not have a collective labour agreement, and if there is an existing collective labour agreement, an application can be lodged for authorisation within 120 days before the expiry date of the collective labour agreement. The application shall be made to the Ministry of Family, Labour and Social Services. First, the Ministry will determine the type of collective labour agreement by forming a workplace-sector and employer relationship in the application lodged via the Automated Authorisation System; then relate all workplaces within the same sector belonging to the same employer; investigate whether there is an existing collective labour agreement in the relevant enterprise or workplace and if there is, whether there is less than 120 days before its expiry; and determine the number of employees and union member workers at the relevant workplace(s) and therefore determine whether there is an authorised union.

If there is a trade union at the workplace(s) subject to the application which fulfil the conditions required to sign the collective labour agreement, the Ministry shall notify the established trade unions in the sector which meet the sector threshold as well as the employer or the employers' union which represent the employer within six work days following the application, about the name and address of the trade union, number of workers and number of members in that sector and at that workplace; if there are no authorised trade unions determined by the examination conducted as a result of the application, only the applicant shall be notified in this regard.

Upon the authorisation correspondence sent by the Ministry to relevant parties, these parties are entitled to submit objections pointing out that one or both of the parties lack authorisation conditions or that the applicant itself has these conditions fulfilled. The petition of objection shall be registered at the competent authority within six work days following the date of notification and then submitted to the court. The competent authority for a workplace or enterprise-level collective labour agreement is the Provincial Directorate of ISKUR with which the said workplace of enterprise is affiliated; for group collective labour agreements covering workplaces under the remit of the same Provincial Directorate of ISKUR, it is the Provincial Directorate of ISKUR with which these workplaces are affiliated; and for group collective labour agreements that cover workplaces under the remits of more than one Provincial Directorates of ISKUR, it is the Ministry. Relevant parties are obligated to justify their objections. If the authorisation correspondence sent by the Ministry to relevant parties was not objected within the given period or the objections were rejected by the court or upon the objection from the union which was notified that it failed to fulfil the authorisation conditions, the authorisation document is awarded by the Ministry to the authorised union after the notification of the definite court decision which determined that the union fulfilled the authorisation conditions.

The aim of this study is to determine the possible problems that emerge and may emerge during the implementation stage in order to ensure and sustain short or long-term institutional development in the collective bargaining authorisation system with regard to improving social dialogue as well as determining the needs and finding appropriate solutions in this regard. In this context, a needs assessment was conducted using qualitative research methods in order to elicit in detail the perceptions and attitudes of 16 participants comprising of academicians, relevant public officials and union representatives about the existing practice about the authorisation system within the collective bargaining process. An inductive process was followed from the specific to the general by creating codes and themes based on the breakdown of the interviews for the analysis of the findings obtained from the in-depth interviews conducted with participants using semi-structured interview forms. In this regard, the data analysis method used was thematic analysis.

In this study, by taking into account the process summarised above about the collective bargaining authorisation system, the following topics were researched: the impact on social parties caused by the sector threshold in general, changes in the sector and workplace-level thresholds, transitional provisions, decrease in the number of sectors, and the time limitation imposed for the determination of authority application; whether the workplace and enterprise distinction is used properly in applications; how the objections about the type of collective labour agreements and other objections about determination of authority affect the process; as well as the problems in authorising public employers' union and the ones in the Automated Authorisation System. Moreover, participants' opinions and recommendations on the authorisation process in general and on the Automated Authorisation System in specific were presented.

2. THEORETICAL BACKGROUND

Literature review conducted for laying down the theoretical background of the study involves existing legal regulations, national level statistics and secondary sources. While the literature review about the collective bargaining authorisation system mainly aims to demonstrate the existing situation and set a background for the field study, it also aims to contribute in resolving the problems in the current authorisation system.

Literature review also contributed in designing the research model and drafting the interview questions to be used in the qualitative study to be carried out within the scope of the needs assessment. In this regard, the literature on the research subject is of great importance in terms of developing the research problem, selecting participants, drafting semi-structured interview questions, providing an analytical framework for the study as well as interpreting and making sense of the findings.

2.1. Collective Labour Agreement Authority

Collective labour agreement authority refers to the organisations or persons who can be parties to the collective labour agreement (with collective labour agreement capacity) having fulfilled the conditions prescribed by the Law to sign collective labour agreements. Workers' collective labour agreement authority is different than the employers' collective labour agreement authority (Aktay, 2015: 197).

2.2. Workers' Collective Labour Agreement Authority

Workers' collective labour agreement authority used to be governed by the first paragraph of Article 12 of the Law No. 2822 on Collective Labour Agreement, Strike and Lockout before the Law No. 6356 on Trade Unions and Collective Labour Agreement entered into force (Sur, 2008: 255). In the current legal system, this collective labour agreement authority is governed by the first paragraph of Article 41 of the Law No. 6356 on Trade Unions and Collective Labour Agreement (Celik and Caniklioğlu and Canbolat, 2016: 748). As it used to be in the Law No. 2822 (Özveri, 2013:

Chapter Three), the Law No. 6356 also seeks the fulfilment of two conditions for authorisation. Transitional Article 6 of the same the Law regulates the transition from the Law No. 2822 period to the Law No. 6356 period in terms of authorisation conditions (Engin, Yetki, 2013: 145). Article 41 has been amended once before, Supplementary Article 1 on authorisation was added to the Law, then this supplementary law was annulled by the Constitutional Court (AYM, 14.05.2015, E.2014/177, K.2015/49, RG. 11.6.2015, 29383) and the Transitional Article 6 which regulates the transition was amended multiple times. Therefore, workers' collective labour agreement authority was examined periodically based on the dates these amendments entered into force.

2.2.1. 07.11.2012 and Earlier

During this period, the Law No. 2822 was in force and Article 12 of this the Law regulated authorisation. According to the first paragraph of Article 12 which regulated workers' authority; *"Where a trade union has as its members at least ten percent of all workers in the sector in which it is established (except for agriculture and forestry, hunting and fishing) and more than half of the workers working at each of the workplace(s) which will be covered by the collective labour agreement, it is authorised to sign a collective labour agreement."*

Sector threshold has been determined as registering as members at least ten percent of all workers in the sector in which the union is established. Workplace threshold on the other hand was set as registering as members at least more than half of the workers in each workplace or enterprise which will be covered by the collective labour agreement of the union, without making any distinction between workplaces and enterprises (Basbuğ, Toplu İs İliskileri [Collective Labour Relations], 2012: 169-171).

2.2.2. Period between 07.11.2012 and 10.01.2013

While the sector threshold was determined as three percent during the first period of the Law No. 6356, first paragraph of the Transitional Article 6 ruled that this will be implemented as 1 percent for trade unions which are members of the Economic and Social Council, starting from the publication of January 2013 statistics and lasting until July 1st, 2016 and afterwards as two percent until July 1st, 2018. Workplace threshold was determined as more than half of the workers at the time of application if a workplace-level collective labour agreement will be signed, and as at least forty percent if it is an enterprise-level collective labour agreement.

Second and third paragraphs of the Transitional Article 6 prescribed transitional provisions for the authorisation applications to be lodged until the publication of January 2013 statistics which will be published after the Law enters into force.

Third paragraph stipulates that applications for determination of authority lodged to the Ministry before the publication of January 2013 statistics as well as applications lodged by unions which have collective labour agreements signed before 7 November 2012 and those with agreements that will expire after the publication of January 2013 statistics, to be applicable only for their next collective labour agreement, will be concluded based on the ten percent sector threshold laid down in the Law No. 2822 as well as the workplace threshold to register as members at least more than half of the workers at each workplace or enterprise, according to July 2009 statistics.

Second paragraph of the same Transitional Article prescribes that, the workplace threshold for the applications for determination of authority of some of the unions covered by the third paragraph will be taken into account according to the regulation in the Law No. 6356. These unions are those established during the Law No. 2822 period between the last published 2009 statistics and 15 September 2012 and became members of the confederations between the same dates which are the members of the Economic and Social Council. For the applications for determination of authority to be lodged by relevant unions between 7 November 2012 and the publication of January 2013 statistics,

it was stipulated that, rather than registering as members at least more than half of the workers at each workplace or enterprise, the workplace threshold will be implemented as registering as members more than half of the workers if it is a workplace-level collective labour agreement and as at least forty percent of the workers if it is an enterprise-level collective labour agreement. These unions will not be subject to sector threshold (Engin, Yetki, 2013: 145). This regulation creates an exception within the transitional provision.

2.2.3. Period between 10.01.2013 and 10.09.2014

Fundamental conditions laid down in the Law for workers' collective labour agreement authority remained the same. During this period, there were no amendments made in Article 41.

A sentence was added to the third paragraph of the Transitional Article 6 on 10 January 2013 and with this amendment, it was ruled that the transitional provision exception provided for certain unions in the second paragraph will be implemented for all unions. The exception provided by the transitional provision exception was repealed indirectly. It was prescribed that for the applications for determination of authority lodged to the Ministry before the publication of January 2013 statistics as well as applications lodged by unions which have collective labour agreements signed before 7 November 2012 and those with agreements that will expire after the publication of January 2013 statistics, the workplace threshold will be regarded as registering as members more than half of the workers at the time of application if it is a workplace-level collective labour agreement and as at least forty percent of the workers if it is an enterprise-level collective labour agreement.

2.2.4. Period between 10.09.2014 and 04.04.2015

First paragraph of Article 41 of the Law which regulates the workers' collective labour agreement authority has been amended since 10 September 2014 and the sector threshold was lowered from three percent to one percent. However Supplementary Article 1 was also added to the Law on the same date and it was prescribed that this sector threshold will be implemented as three percent for trade unions which are not members of the member confederations of the Economic and Social Council. First paragraph of Transitional Article 6 which prescribed that the sector threshold will be gradually increased to three percent for trade unions which are members of the member confederations of the Economic and Social Council[1] was abolished. Therefore, during this period, the practice of implementing the sector threshold as one percent for trade unions which are members of the member confederations of the Economic and

1 According to the Law No. 4641 on Organisation, Working Principles and Methods of the Economic and Social Council; the Economic and Social Council is a council established to provide social consensus and cooperation in making economic and social policies and reach a consultative joint opinion by creating a continuous and permanent milieu. According to the Articles of the Law which were in force during the relevant period, the Council is chaired by the Prime Minister and is comprised of Deputy Prime Ministers, relevant ministers and undersecretaries, President of State Personnel Presidency as well as three representatives each who represent the Union of Chambers and Commodity Exchanges of Turkey, the public servants' confederation with the highest number of members, Confederation of Turkish Trade Unions, Turkish Confederation of Employer Associations, Turkish Confederation of Tradesmen and Craftsmen, Turkish Union of Chambers of Agriculture, HAK-IS Trade Union Confederation, Confederation of Progressive Trade Unions of Turkey and other government representatives, public servants and non-governmental organisation representatives to be determined by the Prime Minister. It is governed that the Council will have meetings quarterly upon the invite by the chairman. Duties of the Council are laid down in the Law as ensuring that economic and social units within the society contribute in the making of economic and social policies by the Government; undertaking works to strengthen the consensus and cooperation between the Government and social segments as well as among social segments; presenting its views, recommendation and reports to the Government, Grand National Assembly of Turkey, President of the Republic and the public; specifying separately the matters on which consensus was and was not achieved while presenting its opinions, establishing permanent and temporary working boards and determining their members; discussing the reports drafted by these boards; determining the members of the EU-Turkey Joint Consultative Committee by taking into account the structure and attributes of the EU Economic and Social Committee and following the works of the Committee; organising national and international seminars and meetings in line with its objectives; sending representatives to meetings deemed appropriate; and making or causing to make publications and research on economic and social matters. Moreover, the Council will be able to provide opinions, upon request from the Government, about all economic and social matters as well as during the preparation of bills and the development plan which directly affect economic and social life, and also the annual programs.

Social Council and as three percent for unions which are not members became permanent. Other transitional provisions remained unchanged.

2.2.5. Period between 04.04.2015 and 14.05.2015

Fundamental conditions laid down in the Law for workers' collective labour agreement authority remained the same. During this period, there were no amendments made in Article 41 and Supplementary Article 1.

It is laid down in the second paragraph of the Transitional Article 6 of the Law which regulates the transitional provisions about workers' collective labour agreement authority that; trade unions which have as their members at least ten percent of the workers in the sector in which they are established according to July 2009 statistics as well as the trade unions which were established after July 2009 statistics until 15.09.2012, in their applications for determination of authority, as limited to first collective labour agreement they will sign after the collective labour agreements they signed before 4 April 2015, as well as their applications for determination of authority they will lodge within a year after 4 April 2015 at the workplaces and enterprises in the sector in which they are established, workplace threshold will be regarded as registering as members more than half of the workers working at the workplace at the time of application if it is a workplace collective labour agreement and at least forty percent of the workers if it is an enterprise-level collective labour agreement. Third paragraph of the Transitional Article 6 was repealed.

2.2.6. Period between 14.05.2015 and 20.08.2016

Supplementary Article 1 was annulled by the decision of the Constitutional Court of 14.05.2015[2]. After this annulment decision, the rule that provided for the 3 percent threshold for the workers' collective labour agreement authority for trade unions which are not members of the member confederations of the Economic and Social Council was abolished.

Transitional provisions remained unchanged.

2.2.7. 20.08.2016 and onwards (Current Situation)

Fundamental conditions laid down in the Law for workers' collective labour agreement authority remained the same.

It is laid down in the second paragraph of the Transitional Article 6 of the Law which regulates the transitional provisions about workers' collective labour agreement authority that; trade unions which have as their members at least ten percent of the workers in the sector in which they are established according to July 2009 statistics as well as the trade unions which were established after July 2009 statistics until 15/9/2012, in their applications for determination of authority they will lodge within two years after 20 August 2016, workplace threshold will be regarded as registering as members more than half of the workers working at the workplace at the time of application if it is a workplace collective labour agreement and at least forty percent of the workers if it is an enterprise-level collective labour agreement.

In the following table, periodical amendments made in terms of workers' collective labour agreement authority were summarised.

2 According to the Decision No. 2015/49 of the Constitutional Court of 14.05.2015 on Case No. 2014/177 published in the Official Gazette No. 29383 of 11.06.2015; *"… although the rule does not incorporate any regulations that require trade unions to be members of TURK-IS, HAK-IS or DİSK confederations, it is clear that the practice of implementing the one percent sector threshold, which is required to sign labour agreements, as three percent for trade unions which are not members of any of these three confederations forces unions to become members of these confederations. Because, signing collective labour agreements may not be a condition of existence for trade unions, but it is one of their fundamental objectives. Unions will naturally want to benefit from this 1 percent threshold instead of a three percent threshold in order to reach this objective and will therefore be forced to become a member of one of these three member confederations of the Council. It is contradictory to the freedom of association that unions are forced to become members of one of the confederations laid down in the Law No. 4641 in order to obtain the advantage of being subject to the one percent sector threshold."*

Table 1. Workers' Collective Labour Agreement Authority - Periodical Assessment

Period	the Law in Force	Sector Threshold	Transitional Provisions
07.11.2012 and Earlier	the Law No. 2822	10%	-
Period between 07.11.2012 and 10.09.2014	the Law No. 6356	• 3% for trade unions which are not members of the member confederations of the Economic and Social Council • For trade unions affiliated with the member confederations of the Economic and Social Council; 1% after the publication of January 2013 statistics until July 1st, 2016, 2% from July 1st, 2016 to July 1st, 2018 and 3% after July 1st, 2018	***Period between 07.11.2012 and 10.01.2013*** **- First Group:** **Trade unions established between the publication of July 2009 statistics and 15 September 2012 and are members of the Economic and Social Council;** Their applications for determination of authority lodged between 7.11.2012 and 10.01.2013 shall be concluded based on 40 percent enterprise or 50 percent workplace threshold. **-Second Group:** **Trade unions which have collective labour agreements signed before 7 November 2012 which will expire after 10 January 2013;** Only for the next period, their applications for determination of authority lodged before 10.01.2013 shall be concluded based on July 2009 Statistics, 10 percent sector threshold and 50 percent workplace or enterprise threshold. **- Third Group:** **Other trade unions;** Their applications for determination of authority lodged before 10.01.2013 shall be concluded based on July 2009 Statistics, 10 percent sector threshold and 50 percent workplace or enterprise threshold.
			Period between 10.01.2013 and 10.09.2014 **- Trade unions in the second and third groups;** Their applications for determination of authority lodged between 7.11.2012 and 10.01.2013 shall be concluded based on 40 percent enterprise or 50 percent workplace threshold.

Period	the Law in Force	Sector Threshold	Transitional Provisions
Period between 10.09.2014 and 14.05.2015	the Law No. 6356	• 1% for trade unions which are members of the member confederations of the Economic and Social Council • 3% for trade unions which are not members of the member confederations of the Economic and Social Council	***Period between 10.09.2014 and 04.04.2015*** Transitional provisions remain unchanged.
			Period between 04.04.2015 and 14.05.2015 *(Groups have been changed.)* **- New First Group: Trade unions established between the publication of July 2009 statistics and 15 September 2012;** If they have collective labour agreements signed before 4.4.2015, their applications for determination of authority lodged for their subsequent collective labour agreement, or for workplaces and enterprises which have no collective labour agreements, their applications for determination of authority lodged before 4.4.2016 shall be concluded based on 40 percent enterprise or 50 percent workplace threshold. **- New Second Group:** **Trade unions which exceed the sector threshold according to July 2009 statistics;** If they have collective labour agreements signed before 4.4.2015, their applications for determination of authority lodged for their subsequent collective labour agreement, or for workplaces and enterprises which have no collective labour agreements, their applications for determination of authority lodged before 4.4.2016 shall be concluded based on 40 percent enterprise or 50 percent workplace threshold.
14.05.2015 and onwards (Current Situation)	the Law No. 6356	• Pursuant to the annulment decision of the Constitutional Court, the rule of applying the sector threshold as 3% for trade unions which are not members of member confederations of the Economic and Social Council was abolished 1%	***Period between 14.05.2015 and 20.08.2016*** Transitional provisions remain unchanged.
			20.08.2016 and onwards (Current Situation) **- Trade unions in the New First and New Second Groups;** Their applications for determination of authority lodged between 20.08.2016 and 20.08.2018 shall be concluded based on 40 percent enterprise or 50 percent workplace threshold.

2.3. Employers' Collective Labour Agreement Authority

The rule on the employers' collective labour agreement authority is laid down the same both in the repealed the Law No. 2822 and the Law No. 6356. If an employer is a member of an employers' union, this union is, and if not, than the employer itself is authorised to sign a collective labour agreement.

The paragraph added to Article 8 of the Law on Public Procurement Contracts on 10 September 2014 stipulated that; regarding works outsourced pursuant to Article 62(1)(e) of the Law on Public Procurement, in the framework of the principal employer-subcontractor relationship, the collective labour agreements by the subcontractor to exclusively cover workers working at the workplaces belonging to the public authorities and entities covered by this the Law shall be undertaken and concluded by one of the public employers' unions of which public administrations under the central government are its members, provided that the subcontractor is authorised, according to the provisions of the Law No. 6356 on Trade Unions and Collective Labour Agreement. Thereby an exception is introduced in terms of the employers' collective labour agreement authority exclusively for this subcontractor relationship.

2.4. Application Period for Determination of Authority

It is ruled both in the Law No. 2822 and the Law No. 6356 that any workers' or employers' unions willing to sign a collective labour agreement for a workplace of enterprise that do not have any, or the employer itself if it is not a union member, can always lodge an application to the Ministry and request the determination of authority for workers (Oğuzman, 1987: 33). It is concluded that, if there is an existing collective labour agreement in force, an application for determination of authority for a new collective labour agreement can be lodged within 120 days before the expiry of the previous agreement, however the new collective labour agreement will only enter into force after the previous one expires.

Although there were no direct regulations in the Law No. 2822 for the cases of acquisition of another workplace within the same sector which has a collective labour agreement in force, it used to be concluded that the application for determination of authority could be lodged within 120 days before the expiry of the agreement that will end later than the other (Sahlanan, 1992; 61). It was ruled in the Law No. 6356 that the collective labour agreement of the receiving workplace or enterprise is provided with superiority over the other and an application for determination of authority can be lodged for a new collective labour agreement within 120 days before the expiry of this agreement in a manner to cover the acquired workplaces and enterprises as well (Celik and Caniklioğlu and Canbolat, 2016: 756).

2.5. Application Procedure

In order for a union that fulfils the abovementioned conditions to sign a collective labour agreement, first, the party willing to sign the collective labour agreement must lodge an application to the Ministry and request determination of authority. The condition for providing a written application laid down in the Law No. 2822 was repealed by the Law No. 6356 and it only included the word "application". This is mainly because of the habit of using e-Membership adopted by social parties and allowing for the transition to lodging online applications for determination of authority using the e-Government portal (Sekerbay, 2017: 346). With regard to determining the authorised union to sign the collective labour agreement, Article 42 of the Law No. 6356 regulates the application to the Ministry lodged by the willing workers' or employers' union or non-unionised employers.

Circular No. 2015/1 of the Ministry of Labour and Social Security prescribes that regarding the applications for determination of authority which cannot be concluded via the Automated Authorisation System, workers at the workplace or enterprise will be determined by Provincial Directorates.

2.6. Assessment of Application

According to Article 34/II of the Law No. 6356; "Where there is more than one workplace within the same sector belonging to a natural or legal person or a public authority or entity, collective labour agreements can only be signed at the enterprise level". When assessing the application it received via the Automated Authorisation System, first, the Ministry shall establish the workplace-sector and employer relationship and determine the type of the collective labour agreement as well as the distinction of workplace or enterprise-level collective labour agreement (Sekerbay, 2017: 347; Kocabıyık, 2012:197-203). At this step, all workplaces in the same sector belonging to the same employer are linked to each other. Then, it shall investigate whether there are any collective labour agreements in force in the relevant workplace or enterprise and if there is, then whether there are less than 120 days before its expiry date. After these steps are done, number of workers at these workplace(s) and the number of workers who are union members and therefore whether there is an authorised union shall be determined by automated means. The number of workers shall be determined based on SGK (Social Security Institution) declarations (Özveri, Toplu İş Sözleşmesi [Collective Labour Agreement], 2012: 117). If there is more than one workplace in the same sector that belongs to the same employer, none of these workplaces shall be provided with the authority to sign workplace-level collective labour agreements; applications in this regard shall be declined. However, if any of these workplaces were somehow provided with an authorisation document, this document will have to be annulled.

Where there is more than one union at the enterprise that has forty percent or more members, the one with the higher number of members at the time of application shall be provided with the determination of positive authorisation. If unions have an equal number of members and lodge applications on the same date, they shall receive determination of negative authorisation. Where trade unions in the same sector lodge applications for determination of authority for the same workplace or enterprise on different dates, the Ministry shall primarily conclude the first application. If the issue has been referred to the court due to the objections to the application for determination of authority or the determination of authority, the authorisation process shall be postponed until after the judicial decision.

When determining the authorised trade union, declarations which have not been made to the Social Security Institution about the beginning and ending of insuredness before the determination of authority date shall not be taken into account.

Since the membership depends on the union's acceptance of the membership application, when determining whether union members constitute the majority, the workers who have been accepted by the union as members at the time of the application lodged to the Ministry should be taken into account.

2.7. Declaration of the Application Result

If there is a trade union at the workplace(s) subject to the application which fulfil the conditions required to sign the collective labour agreement, the Ministry shall notify the established trade unions in the sector as well as the employer or the employers' union which represent the employer within six work days following the application, about the name and address of the trade union, number of workers and number of members in that sector and at that workplace. If there are no authorised trade unions determined by the examination conducted as a result of the application, only the applicant shall be notified in this regard (Sahlanan, 1992; 63 et seq.).

2.8. Objection to Authorisation

Upon the authorisation correspondence sent by the Ministry to relevant parties, these parties may submit objections to the court pointing out that one or both of the parties lack authorisation conditions or that the applicant itself has these conditions fulfilled by justifying their reasons within six work days following the date of notification.

The petition of objection shall be registered at the competent authority and then submitted to the court. Competent authority for a workplace or enterprise-level collective labour agreement is the Provincial Directorate of ISKUR with which the said workplace of enterprise is affiliated; for group collective labour agreements covering workplaces under the remit of the same Provincial Directorate of ISKUR, it is the Provincial Directorate of ISKUR with which these workplaces are affiliated; and for group collective labour agreements that cover workplaces under the remits of more than one Provincial Directorates of ISKUR, it is the Ministry.

Trade unions, which had as their members less than 3% of the workers in the sector in which they were established, used to be incapable of submitting objections to authorisation. In line with the amendment of 10 September 2014 on the general rule of authorisation, this percentage was lowered to 1%. Currently it is applied as 1%.

Parties generally object to the determination of collective labour agreement authority about issues such as the existence of a collective labour agreement implemented at the workplace (objection about duration), determination of majority (determination of the number of members), preparation of statistics (Akyiğit, 1991: 358 et seq.), sector determination and existence of an enterprise-level collective labour agreement. According to the Law, if the petition of objection and its attachments lack concrete evidence, it will be rejected without any review (Alpagut, 2012, 40).

Objections about factual errors in determining the number of workers and members and duration related objections shall be finalised by the court within six work days without any trials. For other objections, the court shall hand down decisions by holding trials and if this decision is appealed, then the regional court of justice shall conclude a decision within a month. If this decision is also appealed, then the Court of Cassation shall take the final decision within a month.

If an action is brought regarding statistics after the statistics were finalised, it will only be valid in the subsequent authorisation period (Başbuğ, Temel Sorunlar [Fundamental Problems], 2016: 61). According to the Court of Cassation, the last published statistics at the time of application will be taken into account for determination of authority. If there is an objection regarding published statistics, this objection case will be preliminary issue, and the finalisation of the court decision and statistics will be waited. Based on the court decision, after the statistics are finalised, the final form of the last published statistics at the time of application will be the basis of the decision. Therefore, if there is an objection regarding statistics published at the time of the application for determination of authority which has not yet been finalised, objection case about the statistics should be preliminary issue for the objection to authorisation case and the results should be waited (Y9. HD. 07.04.2015, E.2015/9669, K. 2015/13576).

The connection between the cases on sector determination and cases of objection to the determination of authority should be made. It is a topic of discussion whether the cases of objection to sector determination can be preliminary issues for the cases of objection to the determination of authority. According to the second paragraph of Article 5 of the Law No. 6356; *"If the authorisation period has begun for a new collective labour agreement, determination of sector change shall be valid in the subsequent period. Application for sector determination and cases in this regard shall not be considered as preliminary issues in authorisation activities and cases on determination of authority."* It has been pointed out in the doctrine that, based on the rule which defines the concept of enterprise as all of the workplaces within the same sector belonging to the same employer and that disputes regarding having the enterprise status shall be resolved at the court located in the area where the enterprise headquarters are located, the problem of preliminary issues may

emerge again in terms of sector determination. (Sahlanan, 2013: 113). Court of Cassation also pointed out that, the relevant provision should be considered as limited to the sector disputes that emerge during the authorisation period which are possible to resolve using the procedure of sector determination; there are no provisions in the Law similar to the abovementioned regulation stating that disputes about the scope of the enterprise cannot be preliminary issues in the cases of objection to determination of authority; and the rule about signing enterprise-level collective labour agreements is about public order and therefore if there is a dispute about the scope of the enterprise, solution of this problem should be a preliminary issue (22. HD., 06.12.2013, E.2013/33468, K. 2013/28331) (Basterzi, 2016: 183-184). Court of Cassation has separated determination of workplace authority from determination of enterprise authority with this decision and if there is determination of workplace authority, then a sector objection cannot be a preliminary issue but if there is determination of enterprise authority, then disputes about the sector should be preliminary issues in objections to determination of authority regarding the scope of the enterprise. This distinction is criticised in the doctrine. It is pointed out that, even if it is a determination of authority for a workplace collective labour agreement, if the employer has an objection on the sector determination in connection with its claim to have another workplace in the same sector, this would turn the collective labour agreement to enterprise-level from workplace-level and therefore it concerns the workplace-level collective labour agreement rule about public order and this recognition will nullify the rule of not making it a preliminary issue laid down in the second paragraph of Article 5 of the Law (Celik and Caniklioğlu and Canbolat, 2016: 765).

2.9. Objection to Negative Authorisation

If the examination conducted after the applications cannot determine any authorised trade unions, only the applicant shall be notified in this regard. A trade union which has been notified that it failed to fulfil the authorisation conditions may bring an action within six work days for the determination of whether it has authority (Canbolat, 2013: 30; Dereli, 2013:58). The court shall also inform the trade unions which have as their members at least 1% of the workers in that sector as well as the employers' union or the non-unionised employer about the action. The court shall finalise the case within two months. In line with the amendment of 10 September 2014 on the general rule of authorisation, this rate was lowered from 3% to 1%. Currently it is applied as 1%.

2.10. Authorisation Document

If the authorisation correspondence sent by the Ministry to relevant parties was not objected within the given period or the objections were rejected by the court or upon the objection from the union which was notified that it failed to fulfil the authorisation conditions, the authorisation document is awarded by the Ministry to the authorised union after the notification of the definite court decision which determined that the union fulfilled the authorisation conditions. Periods stipulated in the law about awarding the authorisation document are related to the Ministry's duty and shall not result in the invalidity of the authorisation document when these periods are exceeded (Tuncay and Savas, 2013: 215-216; Aktay and Arıcı and Senyen Kaplan, 2013, 515). The authorisation document issued by the Ministry shall demonstrate which employers' union or employer the authorised trade union is authorised to sign a collective labour agreement as well as which workplaces or enterprises are covered.

3. RESEARCH DESIGN

In-depth interviews were conducted with 16 participants including representatives of the Ministry of Family, Labour and Social Services, social partners, and academicians in the context of this study aiming to identify encountered and potential problems in the implementation stage for developing short or long term development and ensuring the continuity of such development of the collective bargaining authorisation system at institutional-level in terms of improving social dialogue, as well as the needs and finding appropriate solutions. This section addresses the conceptual framework, method, selection of participants, development of data collection tool, findings and analysis of the findings of the field study executed through a qualitative research method.

3.1. Conceptual Framework

This section provides the definitions of concepts used in the study and analysis of the findings.

- **Collective Labour Agreement** refers to an agreement concluded between trade unions and employers' union or non-unionised employer to regulate the matters of concluding an employment contract, contents and termination.

- **Collective Bargaining Process** refers to the whole process with trade unions representing workers on one side and employers or employers' organisations on the other side, in which these parties come together in a collective meeting to determine the working rules and conditions of both parties and conclude a collective labour agreement.

- **Collective Labour Agreement Authority** refers to the trade unions, employers or employers' unions which can be parties to the collective labour agreement (with collective labour agreement capacity) having fulfilled the conditions prescribed by the Law to sign collective labour agreements. Conditions for workers' collective labour agreement authority and employers' collective labour agreement authority are regulated differently.

- **Collective Labour Agreement Authorisation System** refers to the process beginning with the fulfilment of the conditions prescribed by the Law to sign collective labour agreement by unions which can be parties to the collective labour agreement (with collective labour agreement capacity) until the trade union receives the authorisation document.

- **Automated Authorisation Project** refers to the system that aims to singularise the data source for the Automated Authorisation Project, ensure that union membership activities take place via e-Government and determination of authority activities are concluded via the automated system.

- **Determination of Authority** refers to the determination whether a trade union fulfils the conditions prescribed by the Law, upon the application from organisations or persons who can be parties to the collective labour agreement (with collective labour agreement capacity).

- **Workplace-level Collective Labour Agreement** refers to the type of collective labour agreement concluded when an employer owns only one workplace in the relevant sector.

- **Enterprise-level Collective Labour Agreement** refers to the type of collective labour agreement concluded when an employer owns more than one workplace in the relevant sector.

- **Objection to Determination of Authority** refers to the application lodged to the court by the workers' or employers' union or the non-unionised employer who received the determination correspondence claiming that one or both of the parties lack authorisation conditions or that the applicant itself has these conditions fulfilled, within six work days following the notification.

- **Authorisation Document** refers to the document awarded by the Ministry to the authorised union when the authorisation correspondence sent by the Ministry of Labour and Social Security to relevant parties was not objected within the given period or the objections were rejected by the court or after the notification of the court decision about the objection and demonstrates which employers' union or employer the authorised trade union is authorised to sign a collective labour agreement as well as which workplaces or enterprises are covered.

3.2. Methodology

This qualitative field study conducted by the method of needs analysis aimed to identify encountered and potential problems in the implementation stage for developing short or long term development and ensuring the continuity of such development of the collective bargaining authorisation system at institutional level in terms of improving social dialogue, as well as the needs and finding appropriate solutions. In addition, it was aimed to capture the expectations of participants through the interviews in the context of needs analysis; and in this context, the gap between the said expectations and current conditions was defined in the needs.

Since the research aimed to capture in detail the perceptions and attitudes of participants comprised of academicians, public officials and union representatives on the current operation of the authorisation system within the collective bargaining process, the needs analysis was conducted by a qualitative research method. Qualitative research is defined as a type of research in which methods such as observation, interviews and document analyses are used and an analysis process of demonstrating perceptions and events in their natural environment in a realistic and holistic manner is followed (Yıldırım and Simsek, 1999: 19). The aim in qualitative research on a certain subject is not to conduct a quantitative analysis of the subject, but to investigate the topic in depth within a broader perspective. In this context, qualitative research aims to make sense of and explain how people live, how they behave, how and what they perceive and how and to what they react (Rothery, Jr. Grinnell and Tutty, 1996: 4).

It is assumed that revealing the views and perceptions of the participants comprised of public officials and union representatives as parties to and operators of the authorisation system and academicians on the system will result in a better understanding of the advantages offered and/or problems caused by the current practice regarding the authorisation system within the collective bargaining process.

3.3. Selection of Participants

The target audience of the qualitative research was defined as follows:

- Actors who have a role in the collective bargaining process, i.e. representatives of social parties,

- Relevant public officials (Ministry of Family, Labour and Social Services),

- Academicians.

Table 2 describes the method followed in identifying the unions representing workers and employers in the list of participants.

Table 2. Criteria for Selection of Participants

Union	Affiliated Confederation	Reason for selection
Hizmet Is	HAK-IS	Despite already exceeding the sector threshold before the Law amendment, it is the union that increased the number of its members the most within the Confederation after the amendment.
Türk Metal	TURK-IS	Despite already exceeding the sector threshold before the Law amendment, it is the union that increased the number of its members the most within the Confederation after the amendment.
Lastik Is	DISK	Despite already exceeding the sector threshold before the Law amendment, it is a union that increased the number of its members significantly within the Confederation after the amendment.
TGS	TURK-IS	Was under the threshold upon the Law amendment but exceeded the threshold again in the subsequent period.
Öz-Is	HAK-IS	Used to be under the threshold before the Law amendment, but exceeded the sector threshold after the amendment.
Nakliyat-Is	DISK	Used to exceed the threshold before the Law amendment, but fell below the threshold after the amendment.
CEIS	TISK	Aimed to represent cement sector.
INTES	TISK	Aimed to represent construction sector.
TISK	--	Aimed to represent the opinions of employers within a general point of view.

Table 3 provides information on the persons intended for interviews and their institutions/organisations in the context of the study.

Table 3. List of Participants

No	Representation	Entity
1	Academician	Social Sciences University of Ankara
2	Academician	Kocaeli University
3	Academician	Ankara University
4	Government	MoFLSS General Director of Labour
5	Government	MoFLSS Collective Labour Agreement Department MoFLSS Union Membership and Statistics Department
6	Employer	CEIS, the Law Department
7	Employer	INTES
8	Employer	TISK
9	Trade Union	Hizmet-Is/HAK-IS
10	Trade Union	Türk-Metal/TURK-IS
11	Trade Union	Lastik-Is/DISK
12	Trade Union	TGS/TURK-IS
13	Trade Union	Öz-Is/HAK-IS
14	Trade Union	Nakliyat-Is/DISK

In-depth interviews were conducted with 16 participants. The interviews took place by responding to the questions face-to-face, through telephone or by e-mail in electronic medium considering the workload, requests of the participants, and travel costs. The research team checked the collected data, got in contact with the respondents as necessary and inquired some of the questions in further detail.

3.4. Development of Data Collection Tool

For the qualitative study, a semi-structured interview form was developed to capture how the participants comprising of academicians, public officials and union representatives perceived the current practice in the authorisation system within the collective bargaining process.

The data collection tool had an initial section of questions on demographics posed to the participants comprising of academicians, public officials and union representatives. This aimed to define the participant characteristics as well as move them to focus on the interview. The capture of participant characteristics was the inception phase of the interview. Demographic questions included age, educational field and attainment, title in the organisation of work, and professional experience. The data collection tool is presented in Table 4.

Table 4. Data Collection Tool (Interview Form)

Date of interview		
Name of organisation		
Of the person interviewed	**Full name**	
	Age	
	Gender	
	Title	
	Total work experience	
	Educational attainment	
	Educational field	
General information on the organisation	**(For unions) Sector**	
	(For unions) Total Number of Members	
	(For unions) Authorisation Are you currently undertaking a collective labour agreement process as an authorised union? Are there any collective labour agreements you signed?	
INTERVIEW QUESTIONS		
1. What do you think about the impact of the sector threshold on obtaining collective labour agreement authority?		
2. What are the effects of lowering the sector threshold from ten percent to three percent and then one percent in terms of obtaining collective labour agreement authority?		
3. Can you evaluate how determining the workplace threshold the same for workplace and enterprise-level collective labour agreements and determining it differently as laid down in the Law No. 6356 affects the collective labour agreement authority?		
4. How were you affected by the transitional provisions of the Law No. 6356 on authorisation?		

Date of interview
5. Can you share your opinions about the lowering of the number of sectors from 28 to 20 in terms of obtaining collective labour agreement authority?
6. There have been no new statistics published since July 2009 statistics until the Law No. 6356 entered into force. What kind of effects do you think this has on the authorisation process?
7. Can you evaluate how adequate it is for determination of authority to allow for an application for determination of authority for a collective labour agreement no later than 120 days in advance of the expiry of the current collective labour agreement?
8. In terms of the distinction between enterprise and workplace-level collective labour agreements, is the unit for which the application will be lodged determined clearly beforehand? Are there any systematic changes that may prevent objections to authorisation in this regard? Can you share your opinions?
9. What do you think should be done to reduce objections to authorisation based on reasons such as the existence of a collective labour agreement implemented at the workplace (objection about duration), determination of majority (determination of the number of members) and preparation of statistics?
10. Sector determination impacts the authorisation process. What kind of a system do you think is required for workplaces to determine the sector expeditiously and effectively in order to avoid going to court?
11. What are the problems you encounter in terms of the authorisation of the public employers' union in contracted works?
12. What are the problems you encounter while you use the Automated Authorisation System?
13. What can be done for a better functioning of the authorisation system? Can you share your recommendations?
14. Considering the effects of the Automated Authorisation System currently in use, is there a different automated system which can be operated more effectively by workers and employers? Can you share your opinions in this regard?

* When asked to other participants besides union representatives, this question was asked as "How do you think the unions were affected by the transitional provisions of the Law No. 6356 on authorisation?"

Contents of the interview questions developed for the data collection tool are explained in Table 5.

Table 5. Data Collection Tool Developed under Qualitative Research: Relation of Means and Ends

Research Question	Type of Question	Question Contents
Questions about participants	Demographics	Participant profile is identified. The aim is to warm up the participants for the interview and prepare them for the research questions.
What do you think about the impact of the sector threshold on obtaining collective labour agreement authority?	Opinion/Value Questions	Aims to assess participants' perceptions on the impact of the sector threshold on unionisation.
What are the effects of lowering the sector threshold from ten percent to three percent and then one percent in terms of obtaining collective labour agreement authority?	Opinion/Value Questions	Aims to reveal the effects of lowering the sector threshold on social parties.
Can you evaluate how determining the workplace threshold the same for workplace and enterprise-level collective labour agreements and determining it differently as laid down in the Law No. 6356 affects the collective labour agreement authority?	Experience/ Behaviour Questions	Aims to conduct an assessment on whether it became easier to reach majority when enterprise-level collective labour agreements are required and whether the lowering of the majority percentage had a negative effect on determination of authority.
How do you think the social parties were affected by the transitional provisions of the Law No. 6356 on authorisation?	Experience/ Behaviour Questions	Aims to get participants' experiences and opinions on whether transitional provisions and the amendment of transitional provisions affected social parties either negatively or positively.

Research Question	Type of Question	Question Contents
Can you share your opinions about the lowering of the number of sectors from 28 to 20 in terms of obtaining collective labour agreement authority?	Opinion/Value Questions	Aims to determine whether the decrease in the number of sectors made certain unions disadvantageous.
There have been no new statistics published since July 2009 statistics until the Law No. 6356 entered into force. What kind of effects do you think this has on the authorisation process?	Opinion/Value Questions	Aims to identify the effects of the period when no statistics have been published.
Can you evaluate how adequate it is for determination of authority to allow for an application for determination of authority for a collective labour agreement no later than 120 days in advance of the expiry of the current collective labour agreement?	Opinion/Value Questions	Aims to assess whether the application period for determination of authority is adequate for completing the authorisation activities until the expiry of the old collective labour agreement, by considering labour peace.
In terms of the distinction between enterprise and workplace-level collective labour agreements, is the unit for which the application will be lodged determined clearly beforehand? Are there any systematic changes that may prevent objections to authorisation in this regard? Can you share your opinions?	Opinion/Value Questions	Aims to reveal whether social parties are able to clearly determine the unit for which they have to lodge an application for determination of authority in order to speed up the process of obtaining the authorisation document and prevent disputes between parties caused by the distinction of workplace-enterprise-level collective labour agreements, and if they are not able to, then reveal the source of the problem.
What do you think should be done to reduce objections to authorisation based on reasons such as the existence of a collective labour agreement implemented at the workplace (objection about duration), determination of majority (determination of the number of members) and preparation of statistics?	Opinion/Value Questions	Aims to determine what to do in order to prevent objections of fact about determination of authority as much as possible.
Sector determination impacts the authorisation process. What kind of a system do you think is required for workplaces to determine the sector expeditiously and effectively in order to avoid going to court?	Opinion/Value Questions	Aims to reveal the requested changes in the existing system in order to make the sector of the workplace is predictable for social parties and to prevent disputes.
What are the problems you encounter in terms of the authorisation of the public employers' union in contracted works?	Experience/ Behaviour Questions	Aims to determine the problems caused by the current system in terms of the collective labour agreement authority of subcontractors in the public subcontractor relationships.
What can be done for a better functioning of the authorisation system? Can you share your recommendations?	Opinion/Value Questions	Aims to develop solution offers for the problems encountered in the Automated Authorisation System.
Considering the effects of the Automated Authorisation System currently in use, is there a different automated system which can be operated more effectively by workers and employers? Can you share your opinions in this regard?	Opinion/Value Questions	Aims to reveal not only the opinions about improving the existing system but also about other alternative systems.

3.5. Findings and Analysis

Part of the records kept during the interviews undertaken in the scope of the needs assessment and the breakdown of the notes taken were done digitally. Then data were analysed and reported. An inductive structure was used for the analysis of qualitative data. A process moving from the specific to the general was followed by creating codes and themes from the breakdown of the interviews with participants. More clearly, data were categorised into sub-sections at the beginning of the analysis, however the aim was to eventually achieve a broader, more combined and holistic structure. In this regard, thematic analysis was chosen for the data analysis.

Thematic analysis involves the use of analytical techniques for seeking themes and patterns within the data. To this end, first step is analytical coding followed by classification and thematisation (Glesne, 2011/2014: 259; Rubin and Rubin, 1995: 239). In this regard, these codes were defined and classified. Finally, a thematic framework was introduced by placing codings with similar theoretical and descriptive views under the same data classifications.

The study, analysed whether the data which were coded the same for a certain situation differed from one participant to another. Moreover, an effort was made to interpret the factors which may have caused different views among participants about the same subject. After the coding and thematisation works, a map of codes and themes was created. The thematisation-coding map created within this framework is presented in Table 6. Findings of the qualitative research were made sense of and interpreted within the framework of this map.

Table 6. Thematisation-Coding Map

Theme 1	**Views on the impact of the sector threshold on unionisation and obtaining collective labour agreement authority**	
Main Code	**Positive Views**	**Negative Views**
Subcodes	• It prevents yellow unions • It contributes in developing strong, effective and institutionalised unionism • It facilitates obtaining collective labour agreement authority and signing collective labour agreements compared to the previous regulation	• Members of unions which cannot exceed the threshold are deprived of collective labour agreement rights • Difficulties experienced by newly established unions in terms of gaining members and obtaining collective labour agreement authority • It creates a barrier in terms of freedom of association • It negatively impacts unionisation • Difficulties experienced by unions in the merged sectors in terms of obtaining collective labour agreement authority
Theme 2	**Views on the impact of lowering the sector threshold on the process of obtaining collective labour agreement authority by unions**	
Main Codes	**Positive Views**	**Negative Views**
Subcodes	• It supports freedom of association • It facilitates obtaining authority and signing collective labour agreements for trade unions • Tendency to unionisation is increased • Scope of collective labour agreements is broadened	• Difficulties experienced by newly established unions in terms of gaining members and concluding collective labour agreements, since the 1 percent threshold it still high for them • Difficulties experienced by unions which are at or below the sector threshold at the workplaces where they are just starting to get organised • Members of unions which cannot exceed the threshold are deprived of collective labour agreement rights

Theme 3	**Views on the impact of differentiation in determining workplace and enterprise thresholds on the process of obtaining collective labour agreement authority**	
Main Codes	**Positive Views**	**Negative Views**
Subcodes	• Scope of collective labour agreements is broadened • It facilitates obtaining collective labour agreement authority compared to the past	• Negative impact of the workplace and enterprise thresholds, which are still high, on unionisation

Theme 4	**Views on the impact of transitional provisions on unions and the process of obtaining collective labour agreement authority**		
Main Codes	**Positive Views**	**Negative Views**	**Views Arguing That There Is No Impact**
Subcodes	• Increase in the number of members of the exempted unions • Prevention of unjust treatment of members of exempted unions	• Loss of members	

Theme 5	**Views on the impact of lowering the number of sectors on the process of obtaining collective labour agreement authority**		
Main Codes	**Positive Views**	**Negative Views**	**Views Arguing That There Is No Impact**
Subcodes	It promotes strong unionism	• Certain unions are unable to exceed the sector threshold due to the increase in the number of workers in certain sectors and they lose their collective labour agreement authority • Problems encountered in the process of redetermining sectors for many workplaces due to the merging of sectors	

Theme 6	**Views on the impact of the period during which no statistics have been published, on obtaining collective labour agreement authority**	
Main Codes	**Negative Views**	**Views Arguing That There Is No Impact**
Subcodes	• Impact of the increase/decrease in the number of members of unions on obtaining or losing collective labour agreement authority is neglected. • It causes a delay in exercising the right to collective labour agreement • Inability to hold collective labour agreement meetings • It causes anti-democratic results in terms of the freedoms of establishing unions, organisation and association since it forces workers to choose existing unions • Unions at the stage of establishment encounter difficulties in proving the accuracy and validity of the number of their members	

Theme 7	**Views on the impact of the fact that applications for determination of collective labour agreement authority can be lodged no later than 120 days in advance on the authorisation process**
Main Codes	• The perception that the 120 day period is reasonable and adequate • Shortening the 120 day period for workplace and enterprise-level collective labour agreements • Preserving the 120 day period for group collective labour agreements
Theme 8	**Views on the problems encountered in determining the unit for which the application will be lodged in applications for determination of authority in workplace and enterprise collective labour agreements**
Main Codes	• Uncertainties in the workplace-enterprise distinction which delay the authorisation process and sometimes even make it impossible • It is not easy to determine whether there is unity of management criterion among workplaces • Inconsistent or contestable declarations of a workplace or an enterprise of different workplaces within an enterprise about sectors • Objections by the employers and judicial processes prevent the system from operating smoothly and expeditiously
Theme 9	**Recommendations on reducing objections to authorisation**
Main Codes	• Changing the existing authorisation system which is solely based on documents and determined by the Ministry • Eliminating the sector threshold • Introducing a new system that will initiate referendums in the authorisation process or the labour dispute process when the employer does not recognise the union • Sharing employer declarations and SGK records regularly with unions which initiate unionisation works • Closing the venue of objections to the authority granted by the Ministry • Determining definite rules on the situations in which the process can be suspended in court when the authorisation document has been obtained. • Supporting the system provided by the Ministry with a stronger infrastructure that enables instant data flow • Introducing referendums for determining the authorised union
Theme 10	**Recommendations on accurate and expeditious sector determination**
Main Codes	• Introducing a different coding system for sector determination in terms of unionisation • Defining the NACE code declaration in the system under Ministry supervision • Making the existing sectors regulation comply with NACE codes and specifying the information to be used in sector determination more clearly in the startup declarations submitted to SGK • Determination of ancillary works in addition to core activities at workplaces by Ministry officials and taking into account these ancillary works in sector determination • Establishing a “Sector/Workplace/Enterprise Determination Board” comprising of Ministry representatives, unions and academicians for sector determination • Conducting sector determination based on the activities of firms rather than their titles • Depriving employers of their right to object when unionisation occurs

Theme 11	Views on problems encountered in the process of obtaining collective labour agreement authority in the subcontractor relationships within the public sector	
Main Codes	**Positive Views**	**Negative Views**
Subcodes	• Problem is resolved after the amendment of the regulation • Problem is resolved after the workers of the subcontractor have permanent positions	• It makes it harder to reach collective labour agreements • Supreme Arbitration Board becomes the main mechanism • The process becomes longer procedurally • Inability to provide authorisation due to the lack of information of subcontractors • False rejection of public employers' unions
Theme 12	**Views on the problems of the Automated Authorisation System**	
Main Codes	• Ensuring certification in automated systems including e-membership, sharing logs with parties and ensuring transparency • Harmonising official correspondence with the Automated Authorisation System • Defining sectors without NACE codes (such as municipal services) in the system • Ensuring that the system automatically gives archive codes; being able to list archival information of each sector • Merging the Working Life Statistics Information System and the Automated Authorisation System • Allowing access to the system via Belgenet • Reinforcing the system infrastructure • Sharing workplace records concurrently (daily) • Ensuring consistency in sector records • Simplifying membership processes, accurately determining whether the worker is already a member of another union and ensuring that union memberships are instantly seen on the system • Defining a warning system in the automated system about lapsing time limits • Developing an interface for the Geographic Information System which can generate demographic data • Designing the system in a way to detect differences in statuses of insured persons • Adding a warning system to the system about legal periods • Ensuring the integration of the system with Banks that have private pension funds	
Theme 13	**Recommendations for a more effective authorisation system**	
Main Codes	• Designing the system to take into account the sector claim of the union • Changing the sector threshold • Establishing an autonomous board about problems in determination of authority similar to the Supreme Arbitration Board with the participation of social parties • Defining the work being undertaken more clearly in the declarations submitted to the Social Security Institution, designing a supervision system about work description declarations • Designing a system for union membership which will particularly restrain employers from reaching workers' e-Government passwords • Designing the system in a way to prioritise workers' will • Notifying the employer as well when workers are members of another union	
Theme 14	**Recommendations on an alternative Automated Authorisation System that will function more effectively**	
Main Codes	• Designing an automated system that will ensure transparency • Designing a system in which documents are uploaded and the authorisation process can be followed online • Eliminating interference with the system • SGK records being inspected by the Ministry	

3.5.1. Participant Profile

As the first step of the research, questions were asked to the participants about demographics. The aim in doing so was to define the characteristics of participants as well as preparing them for the main focus of the interview. Establishing the fundamental characteristics of participants constitutes the introduction part of the interview. Questions about demographics were prepared to involve participants' age, field and-level of education, their title in the institution they work for and their total work experience. In addition, representatives of trade unions were also asked questions about whether they are currently carrying out a collective labour agreement process as an authorised union and whether there are any collective labour agreement they have signed, in order to determine the authorisation status of the unions they represent. Profile of the research participants is presented in Table 7.

Table 7. Participant Profile

No	Sex	Level of Education	Field of Education	Total Work Experience	Title	Institution They Represent
1	Male	Doctorate	Industrial Relations	33 years	Faculty Member	University
2	Male	-	-	-	-	Ministry of Family, Labour and Social Services
3	Male	-	-	-	-	Ministry of Family, Labour and Social Services
4	Female	-	-	-	-	Ministry of Family, Labour and Social Services
5	Male	Bachelor's Degree	the Law	25 years	Vice-President	Trade Union
6	Male	High School	-	16 years	President	Trade Union
7	Male	Bachelor's Degree	Business Administration	23 years	Secretary-General	Employers' Confederation
8	Male	Bachelor's Degree	the Law	22 years	Secretary-General	Trade Union
9	Male	Bachelor's Degree	International Relations	17 years	Head of Department	Trade Union
10	Male	Doctorate	Labour Economics	30 years	Head of Department	Trade Union
11	Male	Bachelor's Degree	Political Science	40 years	President	Trade Union
12	Male	Bachelor's Degree	Business Administration	32 years	Secretary-General	Trade Union
13	Female	Bachelor's Degree	the Law	7 years	Counsellor Lawyer	Employers' Union
14	Female	Bachelor's Degree	the Law	25 years	Deputy Secretary-General	Employers' Union
15	Male	Doctorate	Labour the Law	30 years	Faculty Member	University
16	Male	Doctorate	Labour the Law	26 years	Faculty Member	University

On the other hand, sectors in which trade unions that participated in the interviews in the scope of this study are organised are as follows:

- Metal sector (12),
- Press, publication and journalism sector (08),
- General works sector (20),
- Defence and security sector (19),
- Petroleum, chemicals, rubber, plastic and pharmaceuticals sector (04),
- Transportation sector (15).

Moreover, interviews were conducted with the employers' confederation representing the employers as well as the representatives of unions organised in construction (13) and cement, soil and glass (11) sectors.

3.5.2. Views on the impact of the sector threshold on unionisation and obtaining collective labour agreement authority

According to the regulation laid down in the collective labour agreement legislation, there are two fundamental conditions for a union to sign a collective labour agreement. First, a union must have as its members at least 1% of the total number of workers in the sector in which it is established; and second, it must have as its members more than half of the workers at a workplace and 40% of the workers at an enterprise where it is organised. In this scope, exceeding the sector threshold is one of the most decisive matters for unions to obtain collective labour agreement authority. Sector threshold is a regulation introduced for strong unions organised across the country to benefit from rights such as collective labour agreements and strikes.

Based on the views of participants in the scope of the research, opinions on the impact of the sector threshold on unionisation and obtaining collective labour agreement authority can be categorised under two main groups as positive and negative perspectives. According to the research findings, positive effects of the sector threshold on unionisation and obtaining collective labour agreement authority were the fact that it prevents yellow unions; it contributes in developing strong, effective and institutionalised unionism; it increases representativeness; and it facilitates obtaining collective labour agreement authority and signing collective labour agreements compared to the previous regulation. In this regard, some participants argued that in the absence of a sector threshold, there is a risk that instead of unions that will truly protect workers' rights and interests, employer-led unions would become widespread. Moreover some participants pointed out that if the sector threshold practice is abandoned, the risk of unions with a limited number of members, underdeveloped institutional structures and insufficient economic resources becoming widespread may hinder the development of strong and effective unionism.

> *"… Sector threshold must be limited to one percent. Ten percent is too high. This threshold is a difficult number for newly-established unions. However, we cannot even follow the unions being established. Turkey is beginning to turn into a 'union cemetery'. There should be a threshold but if the union is a member of a confederation, then below a certain number should be acceptable. Confederations strengthen association …"*
>
> ***Trade Union***

On the other hand, participants also mentioned that the sector threshold may have negative effects on unionisation and obtaining collective labour agreement authority. Accordingly, sector threshold causes the members of unions which cannot exceed the threshold to be deprived of collective labour agreement rights and lose members; causes difficulties for newly established unions in terms of gaining members and obtaining collective labour agreement authority; and difficulties for unions in the merged sectors in terms of obtaining collective labour agreement authority. Some participants argued that these negative effects may create barriers in terms of freedom of association.

> *"… Being a member of a union is a constitutional right, however before workers become union members, they need to be convinced about whether the union is authorised and able to exceed the workplace threshold. Presence of the sector threshold is a major problem for workers who will choose an unauthorised union …"*
>
> ***Trade Union***

According to some participants, the 10 percent sector threshold in practice during the Law No. 2821 and 2822 period was not in fact implemented for certain unions and this resulted in imaginary unionisation rates. On the other hand, the sector threshold which was lowered to 1% during the Law No. 6356 period was quite restricted compared to the previous period. In this sense, while there has been positive practices during the Law No. 6356 period such as the elimination of imaginary union memberships due to merged sectors as well as taking into account SGK records and the e-membership practice, in other words, the fact that union memberships started reflecting the reality, some participants still think that the 1 percent sector threshold is still a very high limit to exceed.

> *"…While the 1 percent threshold is not a problem for old and large unions -for now-, it causes a major issue for the unions in merged sectors as well as newly established unions in terms of obtaining collective labour agreement authority.*
>
> *Sector threshold results in a mechanism that severely damages both union rights and freedoms and the right to collective labour agreement. Rights to association, collective bargaining and collective action (including strikes) are inseparable rights. Therefore it is impossible for a union which cannot obtain collective labour agreement authority to benefit from the freedom of collective association. For example in the office sector there are more than 3 million workers. The 1 percent threshold is equivalent to nearly 30 thousand people. Large unions in the sector which exceed the sector threshold have approximately 50-60 thousand members. They barely make it over the threshold. A third union is unable to exceed the threshold with 10 thousand members …"*
>
> ***Academician***

3.5.3. Views on the impact of lowering the sector threshold on the process of obtaining collective labour agreement authority by unions

One of the most discussed matters when and after the Law No. 6356 entered into force was the impact of lowering the sector threshold from ten percent to three percent and then one percent on the process of obtaining collective labour agreement authority by unions. In this sense, some participants argued that this regulation on the sector threshold negatively affected the process of obtaining collective labour agreement authority. According to participants, unions which were at or below the sector threshold experienced difficulties in workplaces where they were just starting to get organised.

Participants supporting this view pointed out that the negative perception created by rival unions and employers that even when the workers are successfully organised, they cannot conclude collective labour agreements caused these unions to fail at most of the workplaces where they tried to organise. Therefore, it was mentioned that many workers were deprived of the right to collective labour agreement despite being union members due to the sector threshold. Moreover, a participant emphasized that the union he/she represented was directly and negatively affected by the lowering of the sector threshold, it has lost its collective labour agreement authority and it took 6-month long organisation works for the union to exceed the 1 percent threshold.

> *"… Before the regulation, there used to be more union members than the number of workers. However, when statistics based on real data, i.e. SGK records were used, even the 3 percent threshold became challenging. Even some notaries were punished for fake unionism. So, unions faced the reality as well. Of course, this was caused by the structural issues of unionisation in Turkey. Therefore, the "truth" was revealed. In certain sectors such as trade, number of works increased whereas the number of unionised workers decreased. Therefore, the real problem is the tendency of de-unionisation …"*
>
> ***Trade Union***

Another negative opinion on the issue was that it would be almost impossible for a newly-established union to gain new members and thereby exceed the sector threshold since it would have very limited opportunities to conclude collective labour agreements for its members. Some participants pointed out that lowering the sector threshold is not enough for eliminating authorisation problems considering the number of organised workers and that different thresholds should be set for different sectors or the threshold should be set as a fixed number of workers based on the sector with the lowest rate of association.

On the other hand, some participants pointed out that the gradual lowering of the sector threshold has facilitated obtaining authority and signing collective labour agreements for trade unions and therefore should be considered positive in terms of the right to collective labour agreement. Similarly, it was also mentioned that, while some existing authorised unions have not lost their authority after SGK records started being taken into account and the threshold has been lowered from ten percent to one percent, some new unions gained also authority and the unionisation rate increased and this may be considered as a positive result. From another perspective, while it has been realised that even the 3 percent threshold is very high after unions' real number of members has been revealed and de-unionisation has increased, it is still obligatory to have a threshold considering the number of unions.

> *"… Lowering the threshold to one percent resulted in a positive impact on unionisation compared to the past. A 10 percent threshold is very difficult even though the number of unionised workers does not reflect the real numbers. Lowering of the threshold is a positive development, because it is a "reachable" rate for workers and unions. This can also be seen in the number of unions which exceed the threshold …"*
>
> ***Trade Union***

Some participants on the other hand mentioned that, while lowering the sector threshold has a positive impact on freedom of association, the real issue that needs focus is to rearrange sector and workplace thresholds in a way to ensure reaching collective labour agreements in order to increase the number and rate of workers covered by collective labour agreements that reflect the real and net unionisation scope.

3.5.4. Views on the impact of differentiation during the Law No. 6356 period in determining workplace and enterprise thresholds on the process of obtaining collective labour agreement authority

Pursuant to the Law No. 6356, collective labour agreements were divided into three categories as;

- Workplace-level collective labour agreements which refer to the agreements concluded by an employer for its only one workplace in a sector with the authorised union in that sector,
- Enterprise-level collective labour agreements which refer to the agreements that cover more than one workplace in the same sector belonging to a natural or legal person or a public entity,
- Group collective labour agreements which refer to the agreements that cover workplaces in the same sector belonging to more than one employer.

Since enterprises incorporate more than one workplace within the same sector and cover more workers, the 50 percent threshold for workplaces was determined as 40% for enterprises. In this sense, according to the majority of participants, the lower threshold determined for enterprise-level collective labour agreements broadens the scope of collective labour agreements. This also makes it easier to obtain collective labour agreement authority compared to the past. Some participants mentioned that they perceive this difference as a positive practice since it facilitated association in workplaces where there were difficulties in association due to enterprises being dispersed. Similarly, considering the fact that according to the Law No. 2822 it used to be necessary for each workplace under the same enterprise to exceed the threshold separately and that the threshold could not be exceeded particularly in workplaces with high numbers of non-covered personnel and an enterprise-level collective labour agreement could not be concluded, it is regarded as a positive development that the workplace threshold is determined as forty percent by considering the whole enterprise. This is considered as a significant advantage considering the size of firms in certain sectors in particular.

> *"… Most of the media organisations in our sector are enterprises. It is a great advantage for us that the enterprise threshold is 40% instead of 50% …"*
>
> ***Trade Union***

On the other hand, in addition to abovementioned positive views, some participants emphasized that both the workplace and enterprise thresholds are still very high. According to participants supporting this view, since the Law No. 6356 also fails to allow for inter-union coalitions enough, workplace and enterprise thresholds have a significant de-unionisation function. In this sense, it was argued that the fact that collective agreement scope is still limited in Turkey despite the recent increase in unionisation is also mainly caused by workplace and enterprise thresholds – in addition to sector thresholds.

According to some participants, considering the size of enterprises, association is very difficult and unions engage in negative competition even among themselves due to this reason and therefore the threshold should be a lot lower than forty percent and it is the only way to conclude collective labour agreements.

3.5.5. Views on the impact of transitional provisions on unions and the process of obtaining collective labour agreement authority

The regulation on authorisation conditions introduced in the Transitional Article 6 of the Law No. 6356 which regulated the transition from the Law No. 2822 period to the Law No. 6356 period and the following amendments were among

the major discussions for unions which barely exceeded the sector threshold or fell below the threshold. The goal of transitional provisions was to provide transition periods for certain matters and preserve unions' rate of association and protect them from negative effects of the new legal regulation. These transitional provisions were as follows;

- Undertaking regulation amendments,
- Sending the lists of workers in the Ministry records to unions,
- Pursuant to the provisions of the Regulation on Acquisition and Termination of Union Membership and the Collection of Membership Fees, implementing regulations which are not contradictory to the Law No. 6356 for a while longer,
- Putting the e-Government membership into practice later,
- Providing convenience for union managers who have terminated their labour agreements,
- Providing certain unions with the right to conclude collective labour agreements when they achieve workplace or enterprise majority by giving them at first 1 year, then 2 years of exemption from sector threshold.

Some participants pointed out that transitional provisions created a positive impact on unions which are exempt from the threshold. While some participants linked this impact to the increase in the number of members of unions provided with exemption by these transitional provisions, others perceived it as a positive development in terms of not treating the members of these unions unjustly in the new system. According to participants who support this view, regulations in Transitional Article 6 should be permanent, sector threshold should be abolished in line with ILO Conventions and each union should be provided with the opportunity to represent its own members. Unions which participated in the research and have relatively stronger rates of association mentioned that transitional provisions did not affect their unions.

On the other hand, there were participants who think that unions without any exemption were negatively affected by transitional provisions. In this regard, it was argued that the unions which lost their ability to obtain authority particularly as a result of the transitional provisions have lost even more members. Moreover, some participants pointed out that while unions have lost members particularly due to the impact of the sector change, transitional provisions have also affected them negatively.

In the following table, perceptions of participants representing the trade unions included in the research (total of 6 trade unions) on being affected by transitional provisions were arranged. Table 8 demonstrates that, two of the representatives from trade unions included in the research were not affected by transitional provisions whereas one was affected positively and other three were affected negatively.

Table 8. How the Trade Unions Participating in This Study Were Affected by Transitional Provisions

Participant No	How It Was Affected
1	0
2	+ (Positive)
3	+ (Negative)
4	0
5	+ (Negative)
6	+ (Negative)
* "0" means not being affected by transitional provisions whereas "+" means positive or negative effect.	

Representatives of employers' unions and confederations interviewed in the scope of the research mentioned that, since the application for collective labour agreement authority is usually lodged by trade unions in practice, transitional provisions on authorisation included in the Law No. 6356 have no direct impact on employers' organisations. However, according to some participants representing the employers' side, the process of concluding collective labour agreements was prolonged about 6 months during mentioned period due to the late responses of the Ministry to authorisation applications.

3.5.6. Views on the impact of lowering the number of sectors on the process of obtaining collective labour agreement authority

One of the most discussed issues during the period when and after the Law No. 6356 on Trade Unions and Collective Labour Agreement entered into force was the lowering of the number of sectors from 28 to 20. Pursuant to a regulation introduced by the Law No. 6356, some sectors were merged and therefore the number of workers working in these sectors had increased. On the other hand, because the number of workers in merged sectors had increased, certain unions which exceeded the threshold in July 2009 sector statistics were below the sector threshold as of January 2013 statistics.

In the scope of the research, views of participants on the impact of lowering the number of sectors on the process of obtaining collective labour agreement authority were evaluated under three dimensions as positive views, negative views and views arguing that there is no impact. First, participants who argued that the lowering of the number of sectors from 28 to 20 was positive pointed out that, unions need to have a strong structure in terms of organisation density and the decrease in the number of sectors would increase this strength. In this sense, according to the participants who shared positive opinions about this practice, lowering the number of sectors from 28 to 20 was "on point" in terms of aggregating the fragmented structure and encouraging strong unionism.

> *"… The structure known as organisation should be stronger. Lowering the number enhances this strength. None of the unions merged just because the number of sectors decreased. Weak unions are harmful …"*
>
> ***Trade Union***

Some participants pointed out that the decrease in the number of sectors - particularly considering the sector in which they are organised - was not an issue and the real problem in this regard was caused by transitional provisions. On the other hand, based on the views of participants who think the lowering of the number of sectors from 28 to 20 had negative effects on the process of obtaining collective labour agreement authority, these negative effects can be listed as follows:

- Since the number of workers in certain sectors significantly increased as a result of the decrease in the number of sectors, certain unions which had collective labour agreement authority before the Law No. 6356 was issued lost their collective labour agreement authority. In this sense, unions operating separately in sectors which were merged by the regulation fell below the sector threshold with their existing number of members. Therefore, unions which had collective labour agreement capacity before the Law No. 6356 and signed collective labour agreements at many workplaces or enterprises and their members encountered a negative situation in terms of exercising their union rights.

- Lowering the number of sectors and merging some of them caused the redetermination of the sector for many workplaces and this practice resulted in certain problems which still continue to exist.

> *"… In fact, there have been "merging negotiations" among unions. Unions which fell below the threshold thought about merging with other unions …"*
>
> ***Trade Union***

- Determining the sectors without taking into account the nature of the works being undertaken in practice caused problems in implementation. Workers were forced to become members of unions in sectors different than the work they actually do.

3.5.7. Views on the impact of the period during which no statistics have been published, on obtaining collective labour agreement authority

It has been governed by Article 6 of the Law No. 5838 and Article 4 of the Law No. 5951 as well as the sentence added to the end of the third paragraph of Article 12 of the Repealed the Law No. 2822 on Collective Labour Agreement, Strike and Lockout that; the Ministry will take into account the membership and resignation declarations it receives as well as worker declarations submitted to the Social Security Institution as of 01.08.2010 for determining authorised unions and arranging statistics and the latest worker and member statistics published by the Ministry until this date shall be valid. During this process, in order to prevent unions from any unjust treatment, validity of 2009 statistics was preserved. After the Law No. 6356 entered into force, January 2013 statistics were published.

Some participants argue that the period during which no statistics have been published had no impact on obtaining collective labour agreement authority. According to participants who support this view, the reason why there is no impact on the union they represent or other unions is the fact that decisions are made based on 2009 statistics. However, during this period, there was a perception that unions in general thought "the threshold meant nothing" and they got into "lethargy."

> *"…During the time when the sector threshold was 10 percent, neither the number of union members nor the data published by the Ministry reflected the reality. During that time, many unions were depicted as exceeding the sector threshold due to official statements not reflecting the reality despite being below the sector threshold. Since this practice has prevailed from 2009 until when the new law entered into force, the failure to publish statistics did not cause any loss in terms of unions …"*
>
> ***Trade Union***

Participants who represent the employers' side mentioned that this situation had no negative impact on them.

> *"…Since there was a provision in the Law No. 2822 which was in force at that time prescribing that the latest published statistics shall be valid until the publication of new statistics, the July 2009 statistics preserved their validity. In this regard, the failure to publish new statistics had no particular negative impact on employers …"*
>
> ***Employers' Confederation***

On the other hand, there are some participants who think that the period during which no statistics have been published had negative effects on obtaining collective labour agreement authority. According to these participants, during the period when no statistics have been published, the impact of the increase and/or decrease in the number of union

members on obtaining or losing collective labour agreement authority was neglected. Many unions remained above the threshold without any effort or organisation. According to a participant who shared an opinion in this regard, since new organisations could risk the positions of the existing union managers, it was in favour of certain union managers and led to laziness for unions. Moreover, according to another participant who shared a negative opinion, the period during which no statistics have been published resulted in major problems and delays in terms of exercising the right to collective labour agreements. According to another participant supporting the same view, the Ministry have not responded to many authorisation requests based on the justification that statistics were not being published and this resulted in the failure to hold collective labour agreement meetings and the right to collective labour agreement was severely "injured".

Furthermore, some participants emphasized that the failure to publish statistics forced workers to choose from the existing unions and therefore resulted in anti-democratic consequences in terms of the freedoms of establishing unions, organisation and association. In this sense, another negative perception in this regard was concerning unions at the stage of establishment. Some participants argued that during the time when no statistics have been published, unions at the stage of establishment in particular encountered various difficulties in proving the accuracy and validity of the number of their members.

> *"… It is a major problem that there are no statistics. During the first stage of your establishment, you come across questions like "How would I know that you have that many members?". Therefore it has a major impact …"*
>
> ***Trade Union***

3.5.8. Views on the impact of the fact that applications for determination of collective labour agreement authority can be lodged no later than 120 days in advance on the authorisation process

Another issue addressed in the scope of the study was to identify the impact of the fact that the application for determination of collective labour agreement authority can be lodged no later than 120 days in advance on the authorisation process. The majority of participants thought that the fact that the application for determination of collective labour agreement authority can be lodged no later than 120 days in advance had no adverse impact on the authorisation process; and in that sense the 120 day period was sufficient and reasonable. Some participants further emphasised that the said duration was introduced to ensure that the authorisation process be executed on time; considering the application for authorisation to sign a new collective labour agreement, objection to authorisation and court process, the duration was sufficient, and the process was further accelerated compared to the past upon transition to electronic infrastructure.

Some participants on the other hand stated that the duration of 120 was set in an era where the Ministry authorities had insufficient technological means and excessive workload; therefore, considering the slow pace of bureaucratic processes and communications etc. in that era, 120 would be considered reasonable. They also noted that, in light of technological advances and concomitant high-speed communications, the said duration could be shortened. Such participants thought that the 120 day period was still a reasonable term for group collective labour agreement procedures. The participants holding such view also believed that the 120 day period could be shortened for workplace and enterprise collective labour agreements other than group collective labour agreements.

> *"… We can say that the 120 day period is reasonable with the onset of technological advances, e.g. e-government. However, the process may at times take longer for group collective labour agreements. The 120 day period may be shortened for workplace and enterprise collective labour agreements. But it is useful to keep it for group collective labour agreements. Indeed, no union objects to the 120 day period. There is stability on this matter…"*
>
> ***Trade Union***

Some of the participants in the study representing employers thought that the issue was not whether the 120 day period was sufficient, but it was long because the actions were done in electronic medium in the new system, therefore must be shortened.

> *"… Rather than the sufficiency of the 120 day period, it is long because the actions are now done in electronic medium, therefore must be shortened. In addition, we wish to state that in practice trade unions usually lodge their applications for authorisation, not at the earliest date, but at a later date…"*
>
> ***Employers' Confederation***

There were also participants on the other hand who though that the process for collective labour agreement should be left to the parties in the context of freedom of association, rather than regulating by minutest details in laws; in that sense, a collective labour agreement process based on detailed time limitations would prejudice the right to collective bargaining.

3.5.9. Views on the problems encountered in determining the unit for which the application will be lodged in applications for determination of authority in workplace and enterprise collective labour agreements

The study investigated whether any problem was encountered in determining the unit for which the application would be lodged in applications for determination of authority in workplace and enterprise collective labour agreements. Some participants expressed that some problems were encountered in practice on this issue, and accordingly, objections to authorisation were lodged. The first of such problems was noted as ambiguities on the distinction of workplace or enterprise which delayed, and even at time made impossible, the processes of organising and obtaining authority. According to those participants holding this view, multiple workplaces operating under the same employer might be listed in different sectors in the Ministry's records although they operated in the same sector. The reason was the initial declaration filed by the employer for the workplace to SGK records.

Some participants stated that there might be uncertainty whether to request authorisation for workplace or enterprise. In that sense, even if there were different workplaces, employers might lodge objections on grounds that there was only one workplace. The said participants, referring to the Court of Cassation, noted that it was not easy to clarify if there was a criterion of unity of management among workplaces

It is thought that inconsistent or contestable declarations of a workplace or an enterprise of different workplaces within an enterprise about sectors are among the most important problems for the authorisation process. Unions formulate their organisation goals and strategies relying on the workplaces in the Ministry's records. In that context, where the efforts of organisation move up to the stage of determination of authority, employers can lodge objections asserting that the sector is different or the sufficient majority is not obtained by raising the number of works working in their other workplaces. Participants believed that objections and judicial process on this matter could prevent the system from operating smoothly and expeditiously.

Participants offered the following recommendations to solve the aforesaid problems:

- Workplace and enterprise thresholds should be significantly reduced so that each union can represent own members and ensure cooperation in the collective bargaining process;
- Regulations should be enacted to prevent employers from making changes which will exclude some workplaces of the enterprise from the enterprise scope after the application for authorisation has been lodged;
- Enterprise collective labour agreements should be no longer obligatory, and the system at workplace collective labour agreement for enterprises should be maintained;
- Declarations to SGK should be more detailed and explanatory at the beginning of the automated authorisation process;
- Objections should be resolved through expertise or mediation system, not by courts.

3.5.10. Recommendations on reducing objections to authorisation

The study investigated what participants thought on what to do to reduce objections to authorisation on such grounds as the existence of a collective labour agreement implemented at the workplace (objection about duration), determination of majority (determination of the number of members) and preparation of statistics. Pursuant to the Law No. 6356, the determination of authorised union is based on the information on union membership from e-government portal and worker declarations made to the Social Security Institution. It was observed that objections to authorisation were usually lodged on the assertion that the majority was changed in respect of the number of workers at workplace.

Participants offered the following recommendations on the issue:

- The existing authorisation system which is solely based on documents and determined by the Ministry should be changed.
- The sector threshold should be eliminated.[3]
- A new system should be introduced that will initiate referendum in the authorisation process or the labour dispute process when the employer does not recognise the union.
- Employer declarations and SGK records should be regularly shared with unions which initiate unionisation works.
- Relying on SGK records may at times cause problems. Particularly at a newly established workplace, since employers are allowed 30 days to declare their workers to SGK, workers not yet declared as of the date of application for authorisation are not taken into account. A new system should therefore be established to allow instant tracking of the number of workers.
- The venue of objections to the authority granted by the Ministry should be closed.[4]

3 There is no agreement on this recommendation.

4 There is no agreement on this recommendation; this was particularly expressed by the representatives of trade unions.

- Clear rules should be laid down on the situations in which the process can be suspended in court. Suspension should only be possible by way of injunction.

> *"… The process may be suspended, for example, if there is factual reason relating to false insuredness. If there is falsehood that may affect the authorisation, let it suspend. Further, if there is a decision by the prosecutor's office, let is suspend. That is, the employer's pressure should not be overlooked…"*
>
> ***Trade Union***

- The system provided by the Ministry should be supported with a stronger infrastructure that enables instant data flow. This will create a better system than one monthly updating the durations of collective labour agreements, numbers and statuses of union members.
- The authorisation mechanism should be re-arranged so that it should not obstruct union organisation and right to collective bargaining. In this sense, a system should be established that will not allow employers to exert pressure on workers to resign from unions or lay off unionised workers through court process, and practices of deunisation should be prevented.
- Referendums should be introduced as a democratic method to determine the authorised union to conclude a collective labour agreement.
- The Ministry's decision of sector determination is published in the Official Gazette, and finalised if not objected within 15 days following the publication. Losses of rights occur in newly organising workplaces due to the lapse of objection time limits. In that context, the objection to sector determination should be rearranged.
- The numbers of workers and sector information should be recorded after certain scrutiny. A separate board or institutional structure should be established to conduct such scrutiny.

3.5.11. Recommendations on accurate and expeditious sector determination

Since sector determination had a bearing on the authorisation process, the study endeavoured to elicit the views and recommendations of the participants on accurate and expeditious sector determination in a manner to avoid going to court on sector determination for workplaces. In this context, first, the representatives from the Ministry stated that the request for sector determination and associated lawsuit were not deemed preliminary issues in authorisation procedures and authorisation cases; such that once the authorisation process for a new collective labour agreement started pursuant Article 5 of the Law No. 6356, the determination of sector change applied for the subsequent period.

On the other hand, some participants criticised the fact that NACE code declaration used in the sector determination relied solely on the employer. It was observed that representatives of unions perceived the requests for sector determination generally employer attempts of collusion aimed to pre-empt the union's authorisation. The said participants stated that the NACE code system was a constant, but the sector determination should be varied in respect of unionisation. They believed that NACE code declaration should be defined in the system under Ministry supervision, thereby the sector determination would be expeditiously concluded without going to court. Another recommendation to improve the system involved the introduction of a different coding system to avoid technical problems.

Another view for on accurate and expeditious sector determination in a manner to avoid going to court was that the current regulation on sectors should be aligned with NACE codes, and the information referred to during sector

determination should be indicated in more detail in the business startup declarations to SGK, so that objections would be avoided right from the beginning because these would allow precise results in sector determination.

On the other hand, some participants thought, based on the fact that the Ministry was the sole authority for sector determination, the Ministry officials might determine ancillary works in addition to the core activity for workplaces, thus such ancillary works should also be taken into account when determining the sector.

> *"… What does security have to do with education, health when determining the sector. Therefore, other activities in addition to the core activity should be taken into account. That is the key issue in sector determination. For example, when the metal workers went on strike, security personnel were not able to do so…"*
>
> ***Trade Union***

Participants noted that the system should be built "smoothly" from the scratch to reduce problems; and proposed the establishment of a "Sector/Workplace/Enterprise Determination Board" comprising of Ministry representatives, unions and academicians for sector determination. The said board might be an autonomous structure, with only the secretariat services provided by the Ministry. In addition, this would enable the operation of the social dialogue mechanism. On the other hand, some participants, in similar fashion to the Ministry's approach, stated that once the authorisation process for a new collective labour agreement started, sector determination was not deemed a preliminary issue, therefore the impact of sector determination cases on the authorisation process relatively decrees.

Another recommendation on the matter was that the sector should be determined according to the activities of firms, not according to their titles. In addition, the sector determination should be made on this basis at the startup phase of firms, and employers be deprived of the right to object when unionisation occurred.

> *"… First, companies should be registered in the sector by their activity, not by title. As an example, there is a certain 'E-Bebek Mağazacılık Anonim Sirketi' among the companies included in the journalism and publication sector. Its business is to sell child products, what is it doing in the journalism sector? The problem should be solved right at the beginning. The sector should be determined when the company is being established, and the employer should not be allowed to object once the unionisation process starts. Employers should not be allowed to register in the sectors where unionisation is weak…"*
>
> ***Trade Union***

3.5.12. Views on problems encountered in the process of obtaining collective labour agreement authority in the subcontractor relationships within the public sector

Amendments were made to the Law No. 4735 on Public Procurement Contracts to facilitate concluding collective labour agreements in the public sector and ensure that the public assume the cost increase arising from the conclusion of collective labour agreements, in light of the fact that subcontracting was becoming more common at public workplaces and the difficulty in covering the wage increases arising from collective labour agreements from the contract price. Accordingly, collective bargaining would be carried out by one of the public employers' unions in which a public administration under the central government was a member, provided that the subcontractor so authorised. In the context of the study, problems were investigated in the authorisation of public employers' unions by the subcontractors.

Some of the participants indicated that it became more difficult to reach a collective labour agreement because the public employers' unions asserted that they had to right to decline authorisation, and avoided engaging in collective bargaining. Consequently, the Supreme Arbitration Board became the key mechanism in contracted works with a significant increase in the collective labour agreement concluded by the Supreme Arbitration Board. Some of the participants highlighted that the process of collective labour agreement was prolonged by procedure in case of subcontractors. A participant in this line of view stated that the unions were excluded from determining the process, which was in the nature of interfering with the collective labour agreement regime.

In contrast, some participants noted that erroneous or deficient authorisation was made due to lack of information on the part of subcontractors in the scope of authorisation; the authorisation document did not arrive within ten days to due to postal service delays; the public employers' union viewed the procedures as an additional burden on themselves and rejected them as deficient/erroneous. The Ministry and some participants stated that the problem was removed because the By-Law on Payment of Price Differential Arising from Collective Labour Agreement in Procurement of Services Based on Staff Employment stipulated that the price differential should also be paid for collective labour agreements which were not carried out by the public employers' unions on the grounds that less than one year remained to the end of contract or due to the non-issue of authorisation by subcontractors, and whose all provisions were decided by the Supreme Arbitration Board. Another view was that the problem was removed upon placing all subcontracted workers into permanent positions in the public sector.

3.5.13. Views on the problems of the Automated Authorisation System

The study investigated the problems encountered and solution proposals by the participants on improving the Automated Authorisation System.

Participants offered the following recommendations on the issue:

- Certification should be ensured in automated systems including e-membership, logs be shared with parties and transparency be ensured.
- Official correspondence should be harmonised with the Automated Authorisation System.
- Sectors without NACE codes should also be defined in the system.
- The system should automatically give archive codes; being able to list archival information of each sector by province.
- The Working Life Statistics Information System and the Automated Authorisation System should be merged.
- Access should be allowed to the system via Belgenet.
- The system infrastructure should be reinforced to avoid problems in legal time limits.
- Workplace records should be concurrently shared; employer declarations be made on time.
- Consistency in sector records should be ensured; the actual activity at the workplace should be matched with the sector.
- Membership processes should be simplified. It should be accurately determined whether the worker was already a member of another union and ensured that union memberships are instantly seen on the system.

- A warning system should be defined in the automated system about lapsing time limits.
- An interface should be developed for the Geographic Information System which can generate demographic data.
- Problems occur because the system is unable to distinguish between those under 4/a in the context of the Law No. 5510 and those under 4/c and 4/b in respect of the Law No. 657. Such information should be included in the job commencement declaration.
- A warning system should be installed that alerts the user to write an authorisation document within six days when "no objection" correspondence is received in annex to the application for determination of authority.
- The system should integrate with banks that have private pension funds.

3.5.14. Recommendations for a more effective authorisation system

The study solicited recommendations from the participants to improve the authorisation system.

Participants offered the following recommendations on the issue:

- It is wrong that the system relies solely on the employer's declaration of NACE code, therefore, it should be designed to take into account the sector claim of the union.
- Various thresholds should be established for various sectors, or based on the sector with least organisation, a fixed number of members should be established as the threshold.
- An autonomous board, other than the Ministry and courts, should be established similar to the Supreme Arbitration Board with the participation of social parties to resolve problems in determination of authority to distinguish between workplace and enterprise.
- It should be ensured that the activity being undertaken should be more clearly defined in the declarations submitted to the Social Security Institution; and a supervision system should be designed about work description declarations.
- A system should be established which will prevent employers accessing or interfering with trade union membership data or e-government passwords.
- The system should be designed in a way to prioritise workers' will. Some participants expressed that this could be achieved by setting up polls (having a referendum) at workplace to determine authority.
- A declaration should be made to the employer when a worker becomes a member in a different union. It is necessary to inform the employer of which union workers are affiliated or when any worker switches union so that the employer can fulfil own obligations.

3.5.15. Recommendations on an alternative Automated Authorisation System that will function more effectively

The study asked participants if it was possible to have an alternative automated authorisation system which could be operated more effectively by the workers' and employer's sides.

Participants offered the following recommendations on the issue:

- Following the establishment of an autonomous board, other than the Ministry and courts, similar to the Supreme Arbitration Board with the participation of social parties to resolve problems in determination of authority to distinguish between workplace and enterprise, an automated system which would ensure transparency should be designed.
- A system should be designed which allows uploading documents, and tracking of the authorisation process online.
- The system is susceptible to interference both in respect of sector thresholds of unions and determining the sector of workplace. The automated system should be redesigned to prevent external interference; and changing the existing status after the application for determination of authority has been lodged.
- Employer's SGK records should be inspected in a manner involving the Ministry.

4. RESULTS FROM THE WORKSHOP: RECOMMENDATIONS ON IMPROVING THE AUTHORISATION SYSTEM FOR COLLECTIVE BARGAINING IN TURKEY

The Ministry, social parties, representatives of relevant government agencies and academicians came together in the workshop "Problems Experienced in the Authorisation Process in Turkey and Proposals for Solution" held on 2 October 2018 at ILO Turkey Office. At the workshop, the qualitative research findings included in this report titled "Analysis of Needs in the Context of Improving the Collective Bargaining Authorisation System in Turkey" were presented to the participants who in turn provided their views on problems experienced in the authorisation process and proposals for solutions. This section presents the said views.

In the context of the workshop, the views of participants were elicited on the following matters:

- Impact of lowering the sector threshold from %10 to 3% then to 1% on obtaining collective labour agreement authority:
  - Lowering the sector threshold will not be sufficient to resolve the existing problems in the authorisation system. For example, sector threshold etc. practices will not be sufficient to resolve problems as long as laying off unionised works remain as an important problem in respect of working life and unionisation.
  - The lowered sector threshold has not change much in respect of the authorisation process. In this context, whatever unions exceed the 10 percent threshold, the same unions continue to exist in case of a 1 percent threshold. However, no threshold will pave the way for workplace unionism. Therefore, it is correct to apply a threshold.
  - While the lowering of sector threshold has changed the threshold quantitatively, not much has changed in Turkey in terms of unionisation rates. An important matter in this context is to increase unionisation rates.
- Impact of reducing the number of sectors from 28 to 20 on obtaining collective labour agreement authority:
  - Since the "exemption duration" accorded to unions expired as of 7 September 2018, the impact of reducing the number of sectors from 28 to 20 on obtaining collective labour agreement authority will be

better understood in reality in the future. If the exemption duration is not extended, the said impact will start to appear as of 2020.

- Impact of transitional provisions on authorisation of the Law No. 6356 on workers unions:
  - The reason for introducing transitional provisions is to allow time for unions to develop themselves. The unions however failed to develop themselves sufficiently in the said duration.
  - Due to the exemption accorded, the unions actually were not affected by the transitional provisions. This led to lethargy on the part of unions.
- Impact of non-publication of new statistics in the period from July 2009 release to the entry into force of the Law No. 6356 on the authorisation process:
  - Applications by unions for determination of collective labour agreement authority were unprocessed for approximately 11 months because no legislation was enacted. Upon the entry into force of the Law No. 6356, requests started to be responded.
  - Due to the said delay, a problem of "coming of age" arose particularly for the newly established unions. In that sense, unions experienced various problems in proving their membership size and thus whether they met the threshold.
- Recommendations on accurate and expeditious sector determination in a manner to avoid going to court:
  - When there is an objection on the grounds that the sector determination is erroneous, the Ministry undertakes a review on papers, then the Ministry's Inspection Board undertakes a site inspection. The site inspection refers to the act of inspection at the workplace of dispute. Applications by the unions may at times be incomplete. Where the union lacks information on all workplaces owned by the employer, and for example, lodges an objection only for two workplaces, the Ministry undertakes inspection at the referred workplaces only. A system may be developed through which unions are able to view all workplace of the same employer.
  - On the other hand, discrepant practices may occur such that despite the Ministry's published decision of sector determination, SGK Provincial Directorates may enter changes in NACE codes based on the declaration of the employers. Such a practice directly affects the union's efforts to obtain authorisation. Therefore, uniformity of practice must be ensured across SGK units. In addition, later changes in the Automated Authorisation System, i.e. retrospective changes, do not affect the system. In that sense, the sector authorisation of the previous union continues to be valid until a new determination of authority is effected.
  - Since the registration code and sector determination are different, the problems encountered in the initial registration should also be taken into account.
- Problems encountered in the use of the existing Automated Authorisation System:
  - The current system is based on the worker's will. This prevents loss of rights both on the part of unions and workers.

- In the current automated system, when a union member worker changes sector, the recording is manual and prone to error. This however is monitored by the Ministry. In this context, the entire system is open to the worker even if working informally. The worker can select sector, but the system returns "erroneous record." This is better than no return of record at all. However, when "suspended membership" appears in red colour, this does not reflect onto statistics, thus not lead to any misleading result.

- Another problem identified in the context of criticism against the system is the non-alignment of the Ministry's system with SGK and NACE codes. For example, a workplace appearing in energy sector in the Ministry's records, may appear in the metal sector in SGK records.

- Recommendations on better functioning of the authorisation system:

  - Particularly according to the unions organised in the private sector, even if the unions win the case at court when the objection to authorisation is taken to court, workers are forced to resign from membership or laid off. Thus, winning the case does not always result in organisation. This increases the employers' tendency to take the matter to court. Therefore, if a board or autonomous structure is established to bring together social parties, this issue should be taken into account.

  - When the process of objection to authorisation starts, it is necessary to establish precise rules to fully suspend the process. In that sense, for example in the United Kingdom, when the objection to authorisation is pending at court, it is prohibited to lay off workers for a certain time. In Turkey, the guarantee for association is protected by compensation.

  - The provisions objection to authorisation of Article 43 on of the Law (for example decision in 6 days or the Court of Cassation to decide in 1 month) are not fully implemented. Therefore, the Ministry of Justice can impose administrative sanctions on judges who fail to return judgments within the time limits prescribed in Article 43. This will prevent a prolongation of the process.

  - The problems in the system may be resolved by information processing. In that respect, first the parties should come together to determine sectors, and the system be updated continuously through a piece of software. It is possible to design a system similar to UYAP.

5. CONCLUSIONS AND EVALUATIONS

The exercise of the constitutional right to collective labour agreement is made conditional on fulfilling the authorisation conditions pursuant to the Law No. 6356 on Trade Unions and Collective Labour Agreement. A collective bargaining authorisation system was established pursuant to the Law and secondary legislation to establish whether the persons or institutions with capacity to be a party to a collective labour agreement fulfil the authorisation conditions. Since the system aims to establish the fulfilment of authorisation conditions, the process is directly affected by authorisation conditions and changes thereof. When the sector threshold is not met as the first conditions for authorisation, the process ends very early; and if the sector threshold is met, the workplace threshold determines the award of authorisation. The consequences of transitional provisions and the amendments to sector and workplace thresholds emerge in the long run. In addition, the method of establishing the fulfilment of authorisation conditions including the objection processes impacts the system. The determination method is decisive for the pace and effectiveness of the system from lodging the application at the right time for the right unit to the evaluation of objections. In order to improve the system, the study elicited the participants' views on the authorisation conditions and the method applied to establish the fulfilment of authorisation conditions; and identified the problems, needs and solutions for proposals with a view to establishing an expeditious and effective system.

5.1. Evaluations on Authorisation Conditions

The first condition for authorisation on the part of workers' side is to meet the sector threshold. The impact of the sector threshold on authorisation can be assessed in two dimensions, namely positive and negative. It was expressed that the unions which failed to meet the sector threshold lost more members because of deprivation of the right to conclude a collective labour agreement, and this adversely affected freedom of association; on the other hand, the sector threshold contributed to the development of strong, effective and institutionalised unionism, and allowed the unions to act more independently because of increased representative power. The conclusions of this study point out that the dominant view was that the sector threshold was necessary.

To identify the impact of statistics on union membership which served as the primary source for the determination of the sector threshold figure, the impact of the period when statistics were not published on the authorisation was investigated. It was expressed on one hand that the period when statistics were not published had no impact on the authorisation; while on the other hand, the unions which met the threshold got into lethargy because the changes in the number of members was overlooked in that period, and the newly established unions had problems in proving the accuracy and validity of the number of members. It was evaluated that contributing to the development of strong, effective and institutionalised unionism as the basic argument for the necessity of sector threshold depended on the timely and accurate publication of statistics.

In the context of the study, there were participants who thought that the lowering of sector threshold by the Law No. 6356 had a negative impact, while some other participants believed that the lowering of sector threshold facilitated the work of trade unions and had positive impact on unionism. It was assessed whether the lowering of sector threshold impacted the determination of authority positively or negatively upon the introduction of union membership registration through e-government system, as a result of the establishment of real figures of unionised workers and of the decrease in unionisation. While it was stated that the sector threshold was necessary for its positive impact, it was identified that the rate was still so high for some sectors. Therefore, it is recommended that different thresholds should be set for different sectors or the threshold should be set as a fixed number of workers based on the sector with the lowest rate of association.

The Law No. 6356 reduced the sectors from 28 to 20. The number of sectors is important in respect of whether unions can meet the sector threshold. While there are views that the reduction in the number of sectors aggregated the fragmented structure and promoted strong unionism, other views hold that some unions which earlier met the authorisation conditions lost authorisation due to a significant increase in the number of workers in some sectors; it required a re-determination of sector for many workplaces, thus prolonging the authorisation process. It was indicated that the impact of the reduction of the number of sectors would be identified more clearly in the upcoming period due to the exemption provided in the transitional provisions. It was argued that problems arose on account that, rather than the number of sectors, associated works were not included in the same sector and the sectors were not determined by examining the nature of works actually undertaken. It is therefore recommended that the sectors and scope should be arranged such that the works associated by nature should be in the same sector considering the works actually undertaken.

Another issue relating to the sector threshold is the impact of the transitional provisions of the Law No. 6356 on authorisation. It was expressed that the exemption provided by the transitional provisions prevented the unjust treatment of exempted unions, increasing their number of members; and those not exempted lost more members because they were no longer able to obtain authorisation. It was identified that strongly organised unions were not affected by the transitional provisions.

The second condition for authorisation on the part of workers' side is to meet the workplace-enterprise threshold. It was stated that the high workplace-enterprise threshold restricted the scope of collective labour agreements. To overcome this problem, it is recommended that the Law should allow coalitions among unions. Particularly for the enterprise threshold, it was expressed that organisation was difficult due to the size of enterprises, and the setting of the enterprise threshold at 40% facilitated unionisation.

As was the case in the Law No. 2822, the Law No. 6356 gives the authority to conclude collective labour agreement to the employer's union if the employer is a member to a union, or the employer itself, if it is not a union member. On the other hand, it was regulated that subcontractors in the public sector would authorise the public employers' unions in order to enable the subcontractors to claim the wage increases arising from the collective labour agreement from the contracting authorities, and facilitate the conclusion of collective labour agreements in the case of subcontracting relations. The impact of an employer authorising a union to which it was not a member was investigated. A view was that it became more difficult to reach a collective labour agreement because the public employers' unions asserted that they had to right to decline authorisation, and avoided engaging in collective bargaining, and erroneous or deficient authorisation was made due to lack of information on the part of subcontractors in the scope of authorisation. It was however noted that while no authorisation took place, the payment of price differential for collective labour agreements concluded by the Supreme Arbitration Board did effectively remove the problem.

5.2. Evaluations on Authorisation Process

The impact of the rule that if there was an existing collective labour agreement at workplace or enterprise, an application could be lodged for authorisation within 120 days before the expiry date of the collective labour agreement on the authorisation was investigated; and the dominant view was identified that this period was sufficient.

From the views of the participants, it was concluded that the authorisation system was affected by the objection process during the determination of authority stage and the Automated Authorisation System as much as by the authorisation conditions.

5.2.1. Evaluations and recommendations on objections to authorisation

It was assessed that the objections to authorisation usually stemmed from the identification of majority based on the number of workers at workplace, uncertainties in the distinction of workplace and enterprise, and the problems in sector determination. Pursuant to the Law No. 6356, the determination of authorised union is based on the union membership entered through e-government system and worker declarations to SGK. In contrast to the view that problems of establishing majority were overcome upon transition to the electronic system, there were views that SGK records might at times cause problems; particularly at newly established workplaces, since employers were allowed 30 days to declare their workers to SGK, workers not yet declared as of the date of application for authorisation were not taken into account; and also the employer declarations and SGK records were not instantly shared with unions. It is recommended that to ensure effective operation of the system prescribed by the Law, the information on the number of workers provided by employers should be subject to certain scrutiny, a separate board or institutional structure should be established to conduct such scrutiny, and a system be established to enable instant sharing of worker records.

Another cause of objections to determination of authority was the failure to accurately identify the unit for which the application for determination of authority was made; while it was necessary to determine authority for enterprise collective labour agreement, the authority was determined for workplace collective labour agreement or vice versa. Therefore, there was uncertainty right at the beginning whether to request authorisation for workplace or enterprise;

this problem stemmed from the fact that unions did not know about all workplaces owned by the employer in the same sector, and the limits of workplaces owned by the employer were not known clearly beforehand; and also the employers notified the sectors of workplaces differently. It is recommended that declarations to SGK should be more detailed and explanatory; scrutiny on declarations should be increased and workplace limits be determined more clearly beforehand.

In the distinction of workplace or enterprise collective labour agreement, the determination of sectors in which the employer's workplaces fall determines the unit at which the collective labour agreement will be concluded. The determination of the sector in which the workplace falls affects the authorisation system. Some of the participants criticised that sector determination was based solely on the employer's NACE code declaration, and proposed that a system be established to evaluate the union's claim of sector. There were also views that the it was correct to rely on the NACE code declaration, but the employer's declaration should be subject to the Ministry's supervision. It was assessed that a sector determination board could be established comprising of Ministry representatives and social parties for sector determination in order to reduce objections to sector determination and identify sectors correctly at the beginning.

It was expressed that the reasons for objection might be used by employers to prolong the authorisation process, and by the workers' side to prevent a rival union from obtaining authority. In addition to recommendations specific to reasons for objection, it was also recommended that objections be resolved by a mediation system in priority in order to prevent such use of the objection mechanism and conclude the objections expeditiously; hold referendums in the authorisation process and lay down clear rules on what cases would lead to the suspension of the authorisation process.

5.2.2. Evaluations and recommendations on the Automated Authorisation System

It was also identified that the authorisation process had problems arising from the functioning of the electronic system. It was assessed that most problems stemmed from the incompatibility of electronic systems. It was indicated however that the authorisation process was slowed down by the fact that unions could not simultaneously access the employers' declarations. Recommendations included harmonising official correspondence with the Automated Authorisation System, ensuring consistency in sector records, defining sectors without NACE codes in the system, ensuring that the system automatically gives archive codes, being able to list archival information of each sector, merging the Working Life Statistics Information System and the Automated Authorisation System, allowing access to the system via Belgenet, defining a warning system in the automated system about lapsing time limits, simplifying membership processes and ensuring that union memberships are instantly seen on the system.

5.3. Proposals for Solution Based on Social Dialogue

It was found out in the study that parties in general supported the establishment of autonomous bodies or institutions comprising of social parties to solve problems and recommended establishing separate bodies for separate areas of problems. It was also indicated that the Ministry should assume the role of supervising such bodies or institutions. It was assessed that establishing an autonomous board about problems in determination of authority similar to the Supreme Arbitration Board with the participation of social parties would accelerate the authorisation process and make the system more effective.

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